AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS
AASHTO

DAVID BERNHARDT, P.E., PRESIDENT
COMMISSIONER, MAINE DEPARTMENT OF TRANSPORTATION

BUD WRIGHT, EXECUTIVE DIRECTOR

444 NORTH CAPITOL STREET NW, SUITE 249, WASHINGTON, DC 20001
(202) 624-5800 • FAX: (202) 624-5806 • WWW.TRANSPORTATION.ORG

March 21, 2017

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

SUBJECT: Response to Public Notice – Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies;

Mobilitie, LLC, Petition for Declaratory Ruling

WT Docket No. 16-421

Dear Ms. Dortch:

The American Association of State Highway and Transportation Officials (AASHTO) — a nonprofit, nonpartisan associate`ion representing highway and transportation departments in the 50 states, the District of Columbia, and Puerto Rico — submits comments concerning the subject docket.

The primary function of state highways is to provide for the safe and efficient movement of traffic. These are facilities on which normally travel larger volumes of vehicles at higher speeds and over longer distances than those under local jurisdiction. Accommodation of utility facilities within highway rights-of-way, if allowed, is addressed by each individual state's utility accommodation policy, which is governed by state statute and federal regulations. On freeways, states may have more restrictive policies with regard to longitudinal utility installations within the right-of-way as provided in 23 CFR §645.209(c)(3). Since rights-of-way definitions, access restrictions, and safety considerations differ between the states, the rights granted to states to allow and regulate utilities or any other non-highway use of rights-of-way must not be infringed. Further, FCC action must not conflict or handcuff states' efforts to maintain highway and traffic safety and the highway's aesthetic quality, nor with federal, state, or local laws or regulations per 23 CFR §645.205(a) and 23 CFR §645.211(a)&(b). Any conflicting

jurisdictional overreach in authority by the FCC creates potential litigation concerns over states' mandated right-of-way responsibilities, obstructing their charge to provide for a safe and efficient transportation system.

In regard to the fees associated with utility siting applications within highway rights-of-way, such charges are typically cost neutral, covering only the administrative costs for processing applications and inspections. With respect to interstate highways, 23 CFR 710 Subpart D provisions require that compensation for non-highway use of right-of-way be based on their fair market value. In the case of property not used for highway right-of-way, fair market value is also typically a component for determining compensation for any accommodation on or use of the land. Additionally, a number of our member states do not recognize wireless providers, such as Mobilitie, as public utilities; subjecting their accommodation and the compensation for their allowance on highway right-of-ways to 23 CFR 710.

Relating to Mobilitie, AASHTO does not support its petition as it contradicts state and local authority granted by state and federal codes, such as those referenced above and cited in the attached state comments, thus adversely affecting states' ability to manage the intended use of their highway rights-of-way. Given the complex issues associated with right-of-way access management and the varied approaches employed by individual states, not to mention other various local jurisdictions, arriving at one solution would be difficult and tenuous at best. Rather, it may be most beneficial if this exercise resulted in policy guidance for accommodating this technology that states and local jurisdictions can use in developing or refining their programs to effectively manage such requests in balance with highway safety demands.

Thank you for the opportunity to comment. If you have any questions, please contact Jim McDonnell, Program Director for Engineering, at jmcdonnell@aashto.org or 202-624-5448.

Sincerely,

Bud Wright
Executive Director

ATTACHMENT 1

Federal Communications Notice and Request for Comments
October 18, 2016
WT Docket Number: 16-421

The following are the AASHTO member state comments received in regard to the FCC's, "Comment sought on S*treamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; and Mobilite, LLC Petition for Declaratory Ruling":*

States:

- Georgia 2
- Maine 11
- Maryland 17
- Michigan 27
- Missouri 28
- New Mexico 29
- North Dakota 29
- Oregon 31
- South Dakota 32
- Texas 36
- Utah 38
- Vermont 76

GEORGIA

Russell R. McMurry, P.E., Commissioner

GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center, 600 West Peachtree Street, NW
Atlanta, Georgia 30308
Telephone: (404) 631-1000

February 24, 2017

Ref: ***Response to Public Notice – Comment sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies***
Mobilitie, LLC, Petition for Declaratory Ruling
WT Docket No. 16-421

To whom it may concern:

The Georgia Department of Transportation (GDOT) is submitting comments concerning the petition filed to the FCC by Mobilitie for Declaratory Ruling.

O.C.G.A. 32-6-174 establishes authority for GDOT to "promulgate reasonable regulations governing the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, tracks, traffic and other such signals, and other equipment of any utility in, on, along, over, or under any part f the state highway system or any public road project which the department has undertaken or agreed to undertake or which has been completed by the department pursuant to its authority. In addition to the requirements of such department regulations, it shall be the responsibility of the utility to obtain whatever franchise is required by law." Subsequently, O.C.G.A. 32-4-42 and O.C.G.A. 32-4-92 (Exhibit A) provide that counties and municipalities in Georgia may also establish reasonable rules and grant permits so long as rules are not more restrictive that the GDOT.

The GDOT Utility Accommodations Policy and Standards (UAM) is the guiding document for a significant portion of the state. Consistent with 23 CFR, GDOT developed the UAM to promote safe and efficient operations of the state highway system. Current GDOT UAM 5.11 Wireless Facilities (Exhibit C)* does not prohibit wireless facility installation but restricts installations to collocation via existing utility infrastructure or Department facilities. It is the responsibility of the wireless service provider as with other attachees to establish an agreement with the requisite utility pole owner as GDOT does not have authority to regulate collocation on privately owned utility facilities. Additionally, GDOT has a stated goal of 5 days to review and approve utility encroachment permits.

Collocation is required to mitigate a proliferation of new hazards within the rights-of-way. In 2016, over 1,500 fatalities occurred on Georgia roadways. 60% of those fatalities occurred in crashes where vehicles ran off the roadway. Factors which contribute to those crashes include distracted/impaired driving, weather, and driver fatigue. For many years GDOT has maintained a Utility Pole Line Safety Program where collaboration with stakeholders is required to ensure that all overhead utilities are carried on a single set of poles on one side of the road where applicable. GDOT also established a Clear Roadside Committee (CRC) to identify areas with high frequency of crashes involving utility poles. The CRC generates projects to eliminate, relocate and/or consolidate pole lines in accordance with the AASHTO Roadside Design Guide. To date, approximately $14 million has been allocated for projects by GDOT with matching funds provided from utility owners.

The GDOT State Utilities Office establishes right of way use fees in accordance with GDOT Board Rule 672.11 (Exhibit B). GDOT has established a rate structure with Mobilitie and others for installing wireless infrastructure on GDOT rights-

- GDOT is exploring revisions to UAM 5.11 for standalone installations in accordance with UAM 5.6-7, specific height restrictions and local ordinances.

of-way. The fees established in the Right of Use Agreements are equitable among like service providers and fees are based on the administrative costs associated with processing the permit request and ongoing maintenance of the rights-of-way. Right of Way use fees are used exclusively to fund the operations of the GDOT State Utilities Office in support of the electronic Georgia Utility Permitting System (GUPS), Subsurface Utility Engineering (SUE) Program, Utility Coordination, and other programs that directly benefit the utility industry in Georgia.

GDOT recommends that the FCC deny Mobilitie's petition as the request will restrict authority granted by Federal and State laws to regulate the rights-of way while also contradicting 47 US Code 332(7). Additionally, significantly reducing or eliminating fees could provide a competitive advantage to certain services and does not provide equivalent value for state and local entities.

Sincerely,

Patrick Allen, P.E.
GDOT State Utilities Engineer

EXHIBIT A

O.C.G.A. § 32-4-42
GEORGIA CODE

*** Current Through the 2016 Regular Session ***
TITLE 32. HIGHWAYS, BRIDGES, AND FERRIES
CHAPTER 4. STATE, COUNTY, AND MUNICIPAL ROAD SYSTEMS
ARTICLE 3. COUNTY ROAD SYSTEMS
PART 1. GENERAL POWERS AND DUTIES OF COUNTIES
O.C.G.A. § 32-4-42 (2016)
§ 32-4-42. Powers

The powers of a county with respect to its county road system, unless otherwise expressly limited by law, shall include but not be limited to the following:

(1) A county shall have the authority to negotiate, let, and enter into contracts with any person or any agency, county, or municipality of the state for the construction, maintenance, administration, or operation of any public road or activities incident thereto in such manner and subject to such express limitations as may be provided by Part 2 of this article or any other provision of law. A county shall also have the authority to perform such road work with its own forces or with a combination of its own forces and the work of a contractor, notwithstanding any contrary provisions of Chapter 91 of Title 36;

(2) A county shall have the authority to accept and use federal and state funds and to do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid or state-aid acts and programs in connection with the county's public roads. Nothing in this title is intended to conflict with any federal law and, in case of such conflict, such portion as may be in conflict with such federal law is declared of no effect to the extent of the conflict;

(3) (A) A county shall have the authority to acquire and dispose of real property or any interest therein for public road purposes, as provided in Article 1 of Chapter 3 of this title and in Chapter 7 of this title. In any action to condemn property or interests therein for such purposes, notice thereof shall be signed by the condemning county; and such notice shall be deemed to be the official action of the county in regard to the commencement of such condemnation proceedings. For good cause shown a county, at any time after commencement of condemnation proceedings and prior to final judgment therein, may dismiss its condemnation action, provided that (i) the condemnation proceedings have not been instituted under Article 1 of Chapter 3 of this title, and (ii) the condemnor has first paid to the condemnee all expenses and damages accrued to the condemnee up to the date of the filing of the motion for dismissal of the condemnation action.

(B) Pursuant to the requirements of Part 2 of this article, a county shall have the power to purchase, borrow, rent, lease, control, manage, receive, and make payment for all personal property, such as equipment, machinery, vehicles, supplies, material, and furniture, which may be needed in the operation of its county road system; to lease, rent, lend, or otherwise transfer temporarily county property used for road purposes, as authorized by law; to sell or otherwise dispose of all personal property owned by the county and used in the operation of the county road system which is unserviceable; and to execute such instruments as may be necessary in connection with the exercise of the powers described in this subparagraph;

(4) A county and its authorized agents and employees may enter upon any lands in the county for the purpose of making such surveys, soundings, drillings, and examinations as the county may deem necessary or desirable to accomplish the purposes of this title; and such entry shall not be deemed a trespass nor shall it be deemed an entry which would constitute a taking in a condemnation proceeding, provided that reasonable notice of such entry shall be given the owner or occupant of such property, such entry shall be done in a reasonable manner with as little inconvenience as possible to the owner or occupant of the property, and the county shall make reimbursement for any actual damages resulting from such entry;

(5) A county shall have the authority to employ, discharge, promote, set and pay the salaries and compensation of its personnel, and determine the duties, qualifications, and working conditions for all persons whose services are needed in the construction, maintenance, administration, operation, and development of its county road system; to work inmates maintained in the county correctional institution or inmates hired from the Department of Corrections and maintained by the latter; and to employ or contract with such engineers, surveyors, attorneys, consultants, and all other employees as independent contractors whose services may be required, subject to the limitations of existing law;

(6) A county may grant permits and establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances of any utility in, on, along, over, or under the public roads of the county which are a part of the county road system lying outside the corporate limits of a municipality. However, such regulations shall not be more restrictive with respect to utilities affected thereby than are equivalent regulations promulgated by the department with respect to utilities on the state highway system under authority of Code Section 32-6-174. As a condition precedent to the granting of such permits, the county may require application in writing specifically describing the nature, extent, and location

of the portion of the utility affected and may also require the applicant to furnish an indemnity bond or other acceptable security conditioned to pay any damages to any part of the county road system or to any member of the public caused by work of the utility performed under authority of such permit. At all times it shall be the duty of the county to ensure that the normal operation of the utility does not interfere with the use of the county road system. The county may also order the removal or discontinuance of the utility, equipment, facility, or appliances where such removal and relocation are made necessary by the construction or maintenance of any part of the county road system lying outside the corporate limits of a municipality. In so ordering the removal and relocation of a utility or in performing such work itself, the county shall conform to the procedure set forth for the department in Code Sections 32-6-171 and 32-6-173, except that when the removal and relocation have been performed by the county, it shall certify the expenses thereof for collection to its county attorney;

(7) A county shall have the power to purchase supplies for county road system purposes through the state as authorized by Code Sections 50-5-100 through 50-5-102;

(8) In addition to any taxes authorized by Article 4 of Chapter 5 of Title 48 to be levied and collected for the construction and maintenance of its county road system and activities incident thereto, a county is authorized to levy and collect any millage as may be necessary for such purposes;

(9) A county may provide for surveys, maps, specifications, and other things necessary in designating, supervising, locating, abandoning, relocating, improving, constructing, or maintaining the county road system, or any part thereof, or any activities incident thereto or necessary in doing such other work on public roads as the county may be given responsibility for or control of by law;

(10) In addition to the powers specifically delegated to it in this title and except as otherwise provided by Code Section 12-6-24, a county shall have the authority to adopt and enforce rules, regulations, or ordinances; to require permits; and to perform all other acts which are necessary, proper, or incidental to the efficient operation and development of the county road system; and this title shall be liberally construed to that end. Any power vested in or duty placed on a county but not implemented by specific provisions for the exercise thereof may be executed and carried out by a county in a reasonable manner subject to such limitations as may be provided by law; and

(11) In all counties of this state having a population of 550,000 or more according to the United States decennial census of 1970 or any future such census, the county governing authority shall be empowered by ordinance or resolution to assess against any property the cost of reopening, repairing, or cleaning up from any public way, street, road, right of way, or highway any debris, dirt, sediment, soil, trash, building materials, and other physical materials originating on such property as a result of any private construction activity carried on by any developer, contractor, subcontractor, or owner of such property. Any assessment authorized under this paragraph, the interest thereon, and the expense of collection shall be a lien against the property so assessed coequal with the lien of other taxes and shall be enforced in the same manner as are state and county ad valorem property taxes by issuance of a fi. fa. and levy and sale as set forth in Title 48, known as the "Georgia Public Revenue Code."

HISTORY: Code 1933, § 95A-402, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1974, p. 1422, § 13; Ga. L. 1981, p. 3259, §§ 1, 2; Ga. L. 1982, p. 2107, § 28; Ga. L. 1983, p. 3, § 23; Ga. L. 1985, p. 283, § 1; Ga. L. 1991, p. 94, § 32; Ga. L. 2000, p. 498, § 8; Ga. L. 2002, p. 1126, § 2.

O.C.G.A. § 32-4-42

O.C.G.A. § 32-4-92
GEORGIA CODE

*** Current Through the 2016 Regular Session ***
TITLE 32. HIGHWAYS, BRIDGES, AND FERRIES
CHAPTER 4. STATE, COUNTY, AND MUNICIPAL ROAD SYSTEMS
ARTICLE 4. MUNICIPAL STREET SYSTEMS
PART 1. GENERAL POWERS AND DUTIES OF MUNICIPALITY
O.C.G.A. § 32-4-92 (2016)
§ 32-4-92. Powers

(a) The powers of a municipality with respect to its municipal street system, unless otherwise expressly limited by law, shall include but not be limited to the following:

(1) Subject to the limitations of subparagraph (d)(1)(A) of Code Section 32-2-61, a municipality has the authority to contract with any person, the federal government or its agencies, the state or its agencies, other municipalities, a county in which the municipality lies, or any combination of the foregoing entities for the construction, reconstruction, or maintenance of any public road located within the municipality;

(2) A municipality may accept and use federal and state funds for municipal street purposes and do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid acts and programs. Nothing in this title is intended to conflict with any such federal-aid law and, in case of such conflict, such portion

as may be in conflict with such federal law is declared of no effect to the extent of the conflict;

(3) A municipality may acquire, manage, and dispose of real property or any interests therein for public roads on its municipal street system under the procedures provided in Article 1 of Chapter 3 of this title and in Chapter 7 of this title. In acquiring property for rights of way for federal-aid highway projects on its system, the municipality shall comply with the requirements of the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, Title IV of Public Law 100-17, and in general be guided by the policies applicable to the department as set forth in Code Section 32-8-1. For good cause shown, a municipality, at any time after commencement of condemnation proceedings and prior to final judgment therein, may dismiss its condemnation action, provided that (A) the condemnation proceedings have not been instituted under Article 1 of Chapter 3 of this title and (B) the condemnor has first paid to the condemnee all expenses and damages accrued to the condemnee up to the date of the filing of the motion for dismissal of the condemnation action;

(4) Subject to the requirements of Part 2 of this article, a municipality may purchase, borrow, rent, lease, control, manage, receive, and make payment for all personal property such as equipment, machinery, vehicles, supplies, material, and furniture which may be needed in the operation of the municipal street system and may sell or otherwise dispose of all personal property owned by the municipality and used in the operation of said municipal street system which is no longer necessary or useful in connection with the operation of said system; and it may execute such instruments as may be necessary in connection with the exercise of the foregoing powers in this paragraph;

(5) A municipality and its authorized agents and employees shall have the authority to enter upon any lands in the municipality for the purpose of making such surveys, soundings, drillings, and examinations as the municipality may deem necessary or desirable to accomplish the purposes of this title; and such entry shall not be deemed a trespass, nor shall it be deemed an entry which would constitute a taking in a condemnation proceeding. However, reasonable notice shall be given the owner or occupant of the property to be entered; such entry shall be done in a reasonable manner with as little inconvenience as possible to the owner or occupant of the property; and the municipality shall make reimbursement for any actual damages resulting from such entry;

(6) A municipality may employ, discharge, promote, set and pay the salaries and compensation of its personnel, and determine the duties, qualifications, and working conditions for all persons whose services are needed in the construction, maintenance, administration, operation, and development of its municipal street system; and may employ or contract as independent contractors with such engineers, surveyors, attorneys, consultants, and all other employees whose services may be required, subject to the limitations of existing law;

(7) Except as otherwise provided by Code Section 12-6-24, a municipality may regulate and control the use of the public roads on its municipal street system and on portions of the county road systems extending within the corporate limits of the municipality. Any municipality may regulate the parking of vehicles on any such roads in order to facilitate the flow of traffic and to this end may require and place parking meters on or immediately adjacent to any or all of such roads for the purpose of authorizing timed parking in designated spaces upon the payment of a charge for such privilege. A municipality also may place such parking meters on or adjacent to any public road on the state highway system located within the corporate limits of the municipality when authorized by the department pursuant to Code Section 32-6-2;

(8) A municipality may purchase supplies for municipal street system purposes through the state, as authorized by Code Sections 50-5-100 through 50-5-102;

(9) A municipality may provide lighting and maintenance thereof on any public road located within its limits;

(10) A municipality may grant permits and establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances of any utility in, on, along, over, or under any part of its municipal street system and of a county road system lying within its municipal limits. However, such regulations shall not be more restrictive with respect to utilities affected thereby than are equivalent regulations promulgated by the department with respect to utilities on the state highway system under authority of Code Section 32-6-174. As a condition precedent to the granting of such permits, the municipality may require application in writing specifically describing the nature, extent, and location of the portion of the utility affected. The municipality may also require the applicant to furnish an indemnity bond or other acceptable security conditioned to pay for any damage to any part of a public road or to any member of the public caused by the work of the utility performed under authority of such permit. However, it shall be the duty of the municipality to ensure that the normal operation of the utility does not interfere with the use of any portion of the municipal street system or of a municipal extension of a county public road. The municipality may also order the removal and relocation of the utility, equipment, facilities, or appliances where such removal and relocation is made necessary by the construction and maintenance of any part of the municipal street system or municipal extension of a county public road. In so ordering the removal and relocation of a utility or in performing such work itself, the municipality shall conform to the procedure set forth for the department in Code Sections 32-6-171 and 32-6-173, except that when the removal and relocation have been performed by the municipality, it shall certify the expenses thereof for collection to its city attorney; and

(11) A municipality may provide for surveys, maps, specifications, and other things necessary in supervising, locating, abandoning, relocating, improving, constructing, or maintaining the municipal street system, or any part thereof, or any activities incident thereto or necessary in doing such other work on public roads as the municipality may be given responsibility for or control of by law.

(b) In addition to the powers specifically delegated to it in this title, a municipality shall have the authority to perform all acts which are necessary, proper, or incidental to the efficient operation and development of the municipal street system; and this title shall be liberally construed to that end. Any such power vested by law in a municipality, but not implemented by specific provisions for the exercise thereof, may be executed and carried out by a municipality in a reasonable manner pursuant to such rules, regulations, and procedures as a municipality may adopt and subject to such limitations as may be provided by law.

HISTORY: Code 1933, §§ 95A-503, 95A-504, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1980, p. 775, § 6; Ga. L. 1988, p. 1737, § 2; Ga. L. 2002, p. 1126, § 3. <!-- function dotocseg() { if(!pToc || pToc.isUnreal){ pToc = new ettocObject(false); } pToc.tocseg(0,0,0,'O.C.G.A. § 32-4-92'); } //-->

O.C.G.A. § 32-4-92

EXHIBIT B

Chapter 672-11 MAINTENANCE, RELOCATION, ETC., OF FACILITIES OF PUBLIC UTILITIES

Rule 672-11-.01 Definitions

The following words when used in Chapter 672-11 shall have the following meanings unless the context thereof indicates another meaning:

(a) Annual Fee: The fee applied on a yearly basis for the permit issued pursuant to these rules.

(b) Long Distance Cables: Any cable utilized for the purpose of having long distance telecommunications transmitted through it, except those cables whose predominant use is to provide circuits required to carry communications traffic between telephone subscribers within a local exchange.

(c) Trunk Communication Cables: Any cable utilized for the purpose of providing a telecommunications link between two exchange areas except those segments of such cables whose predominant use is to provide circuits required to carry communications traffic between telephone subscribers within a local exchange.

Rule 672-11-.02 Long Distance and Trunk Communications Cables; Issuance of Permits

(1) The Department shall follow the same policies, procedures, and standards for approving permits for the installation of long distance and trunk communications cables on public road rights-of-way as apply to other types of communication cables except that payment of permit fees shall be required as set forth herein.

(2) Permit fees shall be assessed as an annual payment to be based on miles of line installed along the rights-of-way of a public road. The annual fee is intended to cover direct costs associated with the administration of the permit, the inspection of work, and all indirect costs associated with continued occupancy by the permitted utility. The rate to be assessed shall be in accordance with the rate schedule set forth in 672-11-.03.

(3) The initial annual fee rate shall remain in effect for the year in which the permit is issued and for a period of ten (10) calendar years thereafter. At the end of such ten year period, a new annual fee shall be charged and shall be based on the then established rate schedule.

(4) The permit fees shall apply only to the state highway system and to those local roads and streets which are a part of the Federal-aid system.

(5) There shall be no fee charged for crossings of the state highway system that are not associated with a longitudinal encroachment.

(6) Annual fees shall be prorated from the date of issuance of the permit to December 31, of the year issued and the amount so determined shall be due upon issuance of the permit. For permits issued on or after December 1, of any year, the fee for the ensuing year shall also be due upon issuance of the permit. Thereafter, the annual fee amount shall be due on January 1 of each new year. All annual fees shall be paid within thirty (30) days after their due date. If the annual fee is not paid within the thirty day period the permit shall be subject to revocation by the Department.

(7) Annual fees shall continue to be due each year so long as the property on which the utility facilities are located remains public road right-of-way or until said facilities are abandoned as evidence by written notification to the Department.

Rule 672-11-.03 Long Distance and Trunk Communications Cables; Permit Fee Schedule

Rate Class	Location	Annual Fee
L	1. Along local roads in rural areas	$1,000/mile
	2. Along State Highways in rural areas:	
R1	a. Where ADT is less than 2,000	$1,000/mile
R2	b. Where ADT is 2,000 or more	$2,000/mile
U	3. Along roads and streets inside urban areas	$5,000/mile

Note:

1. These rates are for a single cable installed aerially on a pole line or underground by direct bury or in conduit. Where conduit is used, one additional conduit may be installed simultaneously for use by the owner for future repairs or replacement of minor cable segments.
2. Where lines of two or more owners are installed simultaneously and in the same trench the above rates shall be reduced by 25 percent for each owner.
3. Where cables are installed on a pole line in joint use with another utility facility the above rates shall be reduced by 25 percent.
4. Fees shall be calculated to the nearest .01 mile.
5. Urban areas are those cities and environs having a population of 5,000 or more with boundaries defined by the Department and shown on its official highway maps for each area.

Rule 672-11-.04 Alternate Procedure for Assessing Fees

In lieu of fees required under paragraphs 672-11-.02 and 672-11-.03, the Department may at its option enter into an agreement with a utility for payment of blanket (lump sum) fees to cover all operations of the utility on State rights-of-way on an annual basis. Such agreements and fees shall take into consideration the mileage of facilities in place and the amount of current and anticipated permit work within the rights-of-way and the estimated costs to the Department of the utility's operations. Any such agreements shall provide for annual adjustments of the fee amount.

EXHIBIT C

Sections 5.6, 5.7, & 5.11 of the Georgia DOT- Utility Accommodation Policy and Standards (2016)

Web link: http://www.dot.ga.gov/PartnerSmart/utilities/Documents/2016_UAM.pdf

MAINE

March 8, 2017

Response to Public Notice—Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies
Mobilitie, LLC, Petition for Declaratory Ruling
WT Docket No. 16-421

The Maine Department of Transportation ("MaineDOT") is submitting comments concerning Mobilitie's Petition for Declaratory Ruling.

Current Regulations and Highway Right-of-Way Use

As the State Agency in Maine responsible for a state highway system that accommodates utilities, MaineDOT is concerned about a number of issues raised by Mobilitie's Petition for Declaratory Relief. MaineDOT is charged by the Maine Legislature with establishing adequate, safe and efficient transportation facilities and services. These include an interlocking system of state and state aid highways and bridges that have been built and improved with state and federal funds administered by MaineDOT.

Maine law is clear that the state and federal funds administered by MaineDOT shall be used for highway purposes only, and, accordingly, the Maine Law Court has made it clear that transportation uses are paramount on the State's highways and bridges. Federal law is clear on this point as well, providing that "all real property within the right-of-way shall be devoted exclusively to public highway purposes" and charging State highway departments with "preserving such right-of-way free of all public and private installations, facilities or encroachments" with an exception for utility accommodation. In like manner, the Maine Legislature permits only a few public uses of the State's highway rights of way for non-highway purposes, utility accommodation being one of them.

Telephone or cable companies that provide broadband service and cellular telephone companies are not generally considered "Public" utilities in that they are not regulated by the Maine Public Utilities Commission (Maine PUC). These interstate services are regulated by the Federal Communications Commission (FCC), which also has regulatory jurisdiction over wireless mobile carriers. Nevertheless, accommodation of wireless technologies within state and state aid rights-of-way (ROW) are at the discretion of MaineDOT in accordance with the authority vested in the Department under MRSA Title 35-A, Chapters 23 and 25, and the MaineDOT Utility Accommodation Rules that flow from that authority. Those rules are also required and approved by the Federal Highway Administration under 23 CFR 645.211.

Under Chapter 23 of Title 35-A of the Maine Revised Statutes, only public utilities regulated by the Maine PUC or entities providing services to the general public or to regulated public utilities are authorized to obtain permits to locate their facilities in, upon, along, over, across or under the public ways of the State. These include public or private entities operating telephones or engaged in telecommunications. MaineDOT as the utility licensing authority for state and state aid highways and, pursuant to 23 MRSA § 52, has adopted rules introduced above which provide administrative procedures and establish minimum requirements that govern the location, method of installation, maintenance, adjustment and relocation of all accommodated utility facilities. These rules are intended to protect the safety of the travelling public and to safeguard the integrity and capacity of Maine's highway infrastructure even while accommodating the convenient and economical placement of utility facilities that benefit the public welfare.

Although Mobilitie's petition seems to focus on small cells, they have also proposed placing numerous "transport facilities" (i.e., monopole installations) within the states' highway corridors. These monopole installations consist of self-supporting towers up to and exceeding 120

feet in height with concrete foundations that are over 3 feet in diameter. Depending upon the location, these structures could pose a serious safety hazard to the traveling public. In Maine, we have numerous highway corridors where the available right-of-way is extremely limited and, while the small cells could likely be accommodated on the existing wood utility poles, accommodation of these monopole installations is simply not an option without the company obtaining easements from abutting property owners.

Cell towers of this type have not been accommodated within the highway corridors in the past, not only because they create additional roadside hazards for the travelling public, but also because they reduce the already limited right-of-way that is available to linear utilities (power, water, gas, fiber, telephone, etc.) that must be accommodated. A single wireless facility that connects into the linear networks (power and communications) has much greater flexibility in where it can be located along a corridor, and therefore does not need to be within that corridor.

MaineDOT's current Utility Accommodation Rules, which were developed in compliance with 23 CFR 645.211, also place restrictions upon additional poles within the highway corridors and emphasize the importance of shared-use facilities to minimize the potential hazards created along our roadsides. Therefore, the accommodation of a small cell antenna on an existing pole, versus the accommodation of a small cell antenna on its own separate pole, versus the accommodation of a 120 foot tall monopole installation, are three very different considerations within any given corridor.

Permitting Fees

Presently, MaineDOT charges no permit fees for any facilities placed upon existing utility poles within the state highway corridors. The pole owners do charge attachment fees that are fair and reasonable and, when MaineDOT is the pole owner, the same would apply (although

additional attachments on state-owned poles are not common). Buried facilities do have a one-time fee that is associated with the type of property impacted upon installation (e.g., paved or not paved), as well as the magnitude of such impacts, but there are no additional ongoing fees associated with these installations. These fees are public information. Wireless towers have not been accommodated within the highway corridors for the reasons previously described, but when accommodated on separate state-owned properties outside of the highway corridors, they have been charged fees comparable to those charged for similar towers on similar properties.

If MaineDOT were required to accommodate point facilities in any currently available highway right-of-way location, they would not only limit the space available for the linear facilities, but they would also create a first-come-first-serve advantage for those non-regulated entities lucky enough to be accommodated, which would not serve to enhance overall competition. In that case, MaineDOT would be concerned about one for-profit company monopolizing its public right-of-ways.

Future Policies, Rules, and Highway Right-of-Way Use

The Department is in the process of developing policies to more specifically address emergent wireless technologies. In this effort, MaineDOT is using the same process used to develop the MaineDOT Utility Accommodation Rules in accordance with the authority vested in the Department under MRSA Title 35-A, Chapters 23 and 25, and as required and approved by the Federal Highway Administration under 23 CFR 645.211. Initial drafts of the policy will likely include the following elements:

- Small cell attachments to existing facilities will be allowed within the highway corridors when authorized by the entity owning the existing facility. In the case of standard utility poles located within the highway corridors, rates charged for such attachments will be

subject to Maine PUC review and approval. In the case of MaineDOT-owned poles, the Department will review the applications for acceptability. If the installations are deemed acceptable (e.g., in terms of engineering, safety, and location requirements), the Department will enter into an agreement with the wireless company establishing a fee that is fair, reasonable and consistent for any company providing similar wireless services. These rates will be similar to those regulated by the Maine PUC.

- Monopole installations, as previously described, will not normally be allowed within the normal highway limits. These installations are not specifically authorized to use the highway corridors and do not share the characteristics of a standard "utility pole."

  The Department may, at its sole discretion and on a case-by-case basis, allow monopole installations on surplus property. Where surplus right-of-way or other separate MaineDOT properties may enable accommodation, and where these facilities are deemed acceptable after review of the application, MaineDOT reserves the right to establish a fee based upon prevailing market value determined by appraisal for each installation.

Conclusion

In Maine, the State and local governments that oversee our transportation corridors have an obligation to ensure that these corridors are used as efficiently and as safely as possible. Mobilitie's petition places an emphasis on examples with the lowest right-of-way impacts--small cell attachments--while subtly including very tall monopole transport facilities with massive concrete bases in the discussion as if they were of equal impact.

To the extent that the declaratory relief sought by Mobilitie relates to the placement of monopole installations within the highway right-of-way, MaineDOT has significant concerns. This essentially new style of cell tower is not compatible with our highway corridors and is in no

way comparable to a standard utility pole that has been safely accommodated within Maine's highway corridors for decades. In Maine, structures of this magnitude are normally located on properties adjacent to the highway corridors through easements or leases whose terms are negotiated with the abutting property owners at market rates. When MaineDOT or any other public entities in Maine happen to own such properties, they also have the authority to establish the terms of the use and to charge prevailing market value based upon appraisals.

Under Maine Law, small cell attachments may be accommodated within in the State's highway limits. When pole owners enter into pole attachment agreements with other utilities, the Maine PUC becomes involved if the rates charged for attaching to existing utility poles are thought to be excessive. Any questions about "fair and reasonable compensation" rates, "competitively neutral and nondiscriminatory" practices, or rates previously assessed for similar attachments between utilities would all be addressed as part of the review process. So compensation associated with the placement of small cells in the public right-of-way is essentially a non-issue in Maine.

MaineDOT does not support the Mobilitie petition as it is in conflict with the authority granted to MaineDOT and Maine municipalities by State and Federal Code as referenced above. A blanket declaratory ruling would disregard critical issues and adversely affect our ability to manage our highway right-of-ways.

Respectfully submitted, Brian T. Burne, P.E., Manager
Highway Maintenance Engineer, MaineDOT
Brian.Burne@maine.gov
207-624-3571

MARYLAND

COMMENT SOUGHT ON STREAMLINING DEPLOYMENT OF SMALL CELL INFRASTRUCTURE BY IMPROVING WIRELESS FACILITIES SITING POLICIES; MOBILITIE, LLC PETITION FOR DECLARATORY RULING

WT Docket No. 16-421

COMMENTS OF THE STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION - STATE HIGHWAY ADMINISTRATION
MARCH 8, 2017

Introduction and Summary

On behalf of the Maryland Department of Transportation's ("MDOT") State Highway Administration ("SHA"), we appreciate the opportunity to provide comments for the Federal Communications Commission ("FCC") and the Wireless Telecommunications Bureau ("Bureau") in the matter of WT Docket 16-421 and the request of Mobilitie, LCC, for Declaratory Ruling on certain matters as identified in the Mobilitie Petition. SHA believes that the general requests of Mobilitie merit the review of the FCC and through these comments, SHA hopes to provide information for the consideration of the Bureau that clarifies issues from the perspective of a statewide governmental agency that works with utility companies and other telecommunications providers in matters related to highway right-of-way ("ROW") access, shared use of infrastructure, and related fee structures. SHA has adopted practices consistent with Section 253(c) of the Communications Act of 1934 and believe that the charges assessed to any utility for ROW access or re-use of infrastructure are fair and non-discriminatory. Use fees are based upon the real costs associated with the management of ROW access, impact to infrastructure, and maintenance. With respect to open access and disclosure of records as identified by Mobilitie in their Petition, information on use of the ROW and SHA infrastructure is considered to be public information and subject to disclosure in a manner consistent with the laws of the State of Maryland. Fees charged

by SHA have been approved by the State's Board of Public Works ("BPW") and apply uniformly throughout Maryland.

Response to Mobilitie Petition for Declaratory Ruling

In the Petition, Mobilitie asserts three general areas where it seeks assistance from the FCC and Bureau through a Declaratory Petition. The requested areas for which the Petition seeks the Bureau's help include:

1. Fair and reasonable compensation
2. Competitively neutral and non-discriminatory practices
3. Disclosure of information

SHA discusses each issue below and provides information for the Bureau to contribute to the record in this proceeding.

Fair and Reasonable Compensation

SHA has adopted a statewide table of charges ("Table") related to ROW access for controlled access highways and re-use of SHA infrastructure as well as property. The Table was developed independently by the State's Department of Budget and Management ("DBM"). Pursuant to State direction and as reflected within the Table, a portion of every SHA communications tower constructed since 2000 is designed for "shared use" by utility providers in recognition of the important role that wireless carriers provide in support of public safety. SHA supports this State requirement as wireless carriers now deliver many 9-1-1 calls to public safety answering points ("PSAP") throughout Maryland and this potentially lifesaving service is considered to be in the public interest.

The Table is based upon many factors and does vary rates based upon the geographical area of the state in which infrastructure will be used by an applicant. The Table associates rates based upon factors including the cost of land acquisition by the SHA; e.g. purchasing land in an urban or suburban area may is more expensive than rural property. In a state like Maryland where property values vary by population and scenic factors, SHA believes that the Table appropriately associates infrastructure costs with real acquisition and operating costs to government. Stated another way, land costs in our densely populated areas proximate to the Interstate 95 corridor, Chesapeake Bay, and Atlantic Ocean areas are significantly more expensive to acquire than rural parcels and as such, merit a higher use fee. As such, SHA believes that it is inappropriate to assess a single charge for infrastructure throughout a state as costs of acquisition and maintenance vary based upon real world factors. In this regard, Maryland is similar to many other states where land acquisition and operational costs may change dramatically based upon population, traffic density, or geographical attractions.

In addition to land acquisition costs, the State's budget to maintain highways and other infrastructure is based upon traffic volume and use by travelers. In supporting the access to ROW by a utility, highway safety programs must be consistent with Federal Highway Administration regulations and may be administratively more time consuming as coordination may be required with the Maryland State Police and other entities that provide direct traffic safety support for highway workers. Simply stated, it costs more to perform work tasks in a congested and well-traveled area than in rural parts of Maryland. There is a direct correlation between traffic volume and the costs to SHA to maintain, staff, and manage ROW access and infrastructure use. Environment factors, such as salt water spray, may require additional treatment to ensure structural integrity. The complexities of highway maintenance are also heightened in populated areas when

weather events may require the instant mobilization of highway crews. Highway treatments during winter storms not only affect roadways, but ROW issues as well and must be considered in the identification of costs. All of these factors have a direct or indirect impact on ROW management and maintenance which impacts the costs of the SHA in support of safety programs that benefit the travelling public.

Through the Table, every applicant is charged the same rates for ROW access. The Table attempts to capture the real costs associated with the delivery of services and not to generate profits. Notwithstanding the factors that have influenced development of the Table, the State is now in the process of conducting a thorough audit of infrastructure and shared use with wireless providers and others. Through this audit, the Table may be revised in the future; however, compliance with the provisions of Section 253(c) will be maintained. As noted earlier in the Summary, all shared resource guidelines have been approved by the State's BPW. This is a unique body comprised of the State's Governor, Comptroller, and Treasurer. Every major contract or administrative requirement affecting the public passes through the BPW process to ensure compliance with all laws as well as a check to ensure that State funds are being expended appropriately. The resource sharing Table now in effect was approved by the BPW prior to adoption by State agencies.

As a part of the application process, Mobilitie also seeks the prompt and efficient resolution of siting and ROW permits. SHA desires to ensure that the record reflects that states and local governments often must comply with numerous federal and other laws or ordinances promulgated by other governmental organizations or authorities. Some regulations, such as those contained in the National Environmental Policy Act[1] ("NEPA") or the National Historical Preservation Act[2]

[1] *See* 42 USC §55 et seq. https://www.epa.gov/nepa/what-national-environmental-policy-act
[2] *See* Public Law 89-665; 54 U.S.C. 300101 et seq.

("NHPA") may impose significant compliance issues on governmental bodies acting on the applications of utility and other companies. In the compliance with laws and regulations affecting ROW and shared use of infrastructure, the application approval timeline may be affected by the mandatory review requirements of other bodies. Issues related to NEPA and the NHPA may require lengthy periods of review that affect the timely processing of applications. To issue a permit, the SHA and other governmental bodies may have compliance issues which result in the expenditure of agency funds to facilitate the process of complying with relevant statutes and regulations.

In recognition that there are facts and circumstances that may not permit SHA to meet mandatory timeframes, we encourage the FCC and the Bureau to not impose strict timeframes upon governments other than a generally implied requirement to use "best efforts" to process applications as quickly as practical. In the alternative, if a strict time limit is to be placed on an entity such as SHA and the processing timeline is affected by a mandatory review from another governmental body, Maryland urges the FCC and Bureau to adopt a process that clearly identifies the time requirements for those matters over which it has control. As an example, if there is an adjunct requirement necessitating that the application processing timeline include review by a federal agency, the time required by that federal agency to review the relevant factors of the application, should not be included within the time constraints for which a state or local government is required to meet. In short, agencies can only be responsible for administrative processing timeframes over which it has control. If an application requires review by another governmental body, the requirement of SHA should be to review the application promptly and then distribute it to agencies having the adjunct responsibility to participate in the review in a timely manner.

SHA believes that the real cost of staffing and related administrative overhead are appropriately borne by applicants as a reasonable expense. Staffing may extend beyond internal administrative resources within central facilitates and District offices. Field resources are often required to conduct visual inspections of areas affected by requested permits. Additionally, future initiatives, such as the "Five Year Highway Plans" typically required by the Federal Highway Administration must be reviewed to minimize issues affecting the immediate plans of an applicant relative to future highway and transportation projects. This is why Maryland suggests that there may be a broad number of issues associated with an application that affects processing time as well as the cost of issuing permits.

SHA believes that it is very important for the FCC and Bureau to understand that while general tables or schedules of fees can be developed and are in fact helpful, they may not incorporate every appropriate cost. What we believe is important is that every applicant be treated fairly, consistently, and in a businesslike as well as non-discriminatory manner while maintaining compliance with all government federal and State policies. What we fear is that utility providers, such as Mobilitie, may be unaware of the total scope of compliance issues affecting organizations such as SHA as well as other problems typical of any organization; e.g. personnel shortages, weather emergencies, and related matters beyond our control.

Finally, in the Petition, Mobilitie seeks that governmental agencies only incorporate into fee structures real and actual costs without what some might call a profit margin. Generally speaking, SHA concurs with this philosophy and makes every attempt to assess fees commensurate with the actual costs of maintaining staff and agency infrastructure necessary to issue such permits. However, through the use of a standardized table of fees, there may be variations in the amount of time and effort that goes into the review process. To process applications strictly on what one

might identify as a "time and material" process obviates the standardization and predictability of the fee Table as established by Maryland. As such, Mobilitie's call to charge only the fees actually associated with an application may result in the opposite of what they desire; rate standardization and predictability. It is this latter process that ensures the kind of non-discrimination required under Section 253(c).

Competitively Neutral and Non-discriminatory

Another issue of concern to Mobilitie relates to the provisions of Section 253(c) that require competitively neutral and non-discriminatory business practices. SHA does not disagree with the goal advocated by Mobilitie and as previously stated, Maryland recognizes the importance of supporting the development of wireless broadband and other communications services that are becoming increasingly important to the country and operate in the public interest. Throughout Maryland, SHA operates using standard procedures that have been developed from the recommendations of the American Association of State Highway and Transportation Officials ("AASHTO") and the Federal Highway Administration. The recommendations and requirements of these bodies typically are the basis for SHA operating practices. Statewide procedures are developed within SHA Headquarters and disseminated to District Offices to ensure compliance with policy.

To obtain a utility permit in Maryland, there are certain steps that must be followed by any applicant to comply with State law. These requirements apply to all applicants and as such are non-discriminatory. Mobilitie, as an example, has complied with Maryland law and is considered to be an eligible utility provider which may apply for ROW access and the shared use of resources. In the event that an applicant is denied eligibility status, there are multiple appeal routes within

SHA. As stated by Governor Larry Hogan, Maryland is "open for business" and SHA will work with an applicant to ensure that they meet all statutory requirements to become eligible as a recognized provider of utility services and as such, are eligible to apply for ROW operating permits and potential resource sharing. It is in the public interest for SHA and utility providers to have a large body of qualified contractors which may provide services for carriers and our citizens at competitive rates.

SHA is unaware of any policies or practices that have a discriminatory effect on applicants to become eligible as a utility or in the issuance of permits or for the shared use of resources. As stated in this response, our fee structure is defined based upon the services requested, the area in which services are needed, and the impact to SHA operations. The fee structure is standardized on a statewide basis and does not vary absent some unusual circumstances unique to an applicant's request. The fees assessed by SHA have been developed by a neutral State organization, DBM and approved by the BPW which meets in public. Ample sunshine and transparency are involved in these processes.

Disclosure of Information

SHA has reviewed the filing of Mobilitie and does not support practices that exclude relevant information from public access. Our State's Freedom of Information Act ("FOIA") provides access to virtually all information associated with a ROW request or related Resource Sharing Agreement. Only proprietary or other information excluded from disclosure consistent with FOIA would be kept from an applicant. SHA believes that any excluded information would represent an extremely small amount of information and fall more into the "never say never" category that recognizes unanticipated and unique circumstances may arise in the process of

issuing permits or entering into Resource Sharing Agreements. The vast majority of information associated with rates charged is consistent with the fee table developed independently by DBM and approved by the BPW.

In terms of further disclosure, utility applicants may access information on all State highways through the SHA web site. This site identifies the classification of highways, such as controlled or secondary, through every part of Maryland. The classification system is also a factor in the establishment of access fees. This public information is the first step in a utility's quest for knowledge relative to the costs associated with a potential application.

For SHA communications towers found throughout Maryland and subject to resource sharing, almost every structure is above 200' in height and as such, is publically available to anyone through the FCC's ASR database. Towers are easily identifiable from public highways and a potential user would not be challenged to visit the structure and conduct an initial assessment of load and potentially available space. Once a potential tower is identified for which an applicant may wish to install antenna(s), there is a committee of State agency personnel who review applications and make every effort to support carriers. The Committee, which opens meetings to applicants, assesses standard factors such as space availability, impact to structural capacity, interference to other users, and related matters that affect the soundness of the structure and integrity of other electronics operating from the tower. All members of the Committee understand the importance of shared access as a matter of State policy and applicants are encouraged to investigate the use of these resources.

Although comparatively rare, SHA will consider the request of an applicant, such as Mobilitie, to construct a tower on State property. Again, this is a matter that would be facilitated through the development of a shared resource Agreement and require review by the BPW before

an application could be approved. In addition to SHA, other State agencies have entered into Agreements to permit the construction of towers on real estate owned by Maryland.

Again, SHA understands the importance of supporting commercial carriers, including those advocating 5G and "small cell" technologies. Existing, as well as new and emerging technologies, benefit our citizens and SHA desires to support their operations while maintaining our responsibility to the State public safety users for which the towers were originally constructed and most importantly, our citizens.

Conclusion

SHA believes that operating practices regarding the issuance of ROW access and shared use of infrastructure are consistent with Section 253(c) of the Communications Act and we believe that entities emulating our statewide processes would obviate many of the concerns expressed by Mobilitie in their Petition. Maryland employs a standard Table of fees that was independently developed and approved by our BPW. Operating practices are consistently applied on a statewide basis and encourage the participation of all utility companies and contractors. Finally, the records maintained by SHA relative to the issuance of ROW and shared resource access are subject to FOIA and available to interested parties.

MICHGAN

While we concur that excessive delays and fees are barriers to growth of the 5G wireless communications technology we believe that this request for a declaratory ruling places the Federal Communications Commission in an awkward position of overstepping their authority with regards to property rights. The responsibility for setting of justified fees and rules for permitted access of the public right-of-way (ROW) should lay with those charged with managing the ROW. The costs and processes that the Michigan Department of Transportation utilize are established, transparent, and apply to all applicants equally.

The processes followed by the Department allow us to be as nimble as possible when reviewing siting requests, while assuring that all other Federal and State legal requirements are met. Many concerns are addressed in these siting reviews such as roadside safety, environmental, current and proposed ROW use, etc. No agency is better at reviewing and addressing these concerns then the agency responsible for management of the ROW under their jurisdiction by the means they deem necessary. There are many factors that a State has to consider with ROW use that may differ from the timelines of a local government entity and should be considered, particularly in the case of an application that includes a large number of sites. The timelines appear to be generous, however if the shot clock in FCC 14-153 is considered, there may be instances where an application is inappropriately deemed approved by the applicant simply based on shot clock rules. There should be some allowance for a Department to toll a shot clock when they have precedent setting decisions to be made.

In summary we as a Department know what the demands on our ROW and highway systems are, what we can allow, and the rules that govern its operation and management. A more reasonable approach may be the request that each state transportation agency develop a wireless access program approved by the Federal Highway Administration.

Please let me know if you have any questions.

Thanks,
Collin Castle, P.E.
Connected Vehicle Specialist
Michigan Department of Transportation
8885 Ricks Rd.
P.O. Box 30049
Lansing, MI 48909
Office: 517-636-0715
Cell: 517-243-2115
Email: castlec@michigan.gov

MISSOURI

Mobilitie, LLC's (**Mobilitie**) petition and the Federal Communications Commission (**FCC**) Public Notice use the generic language of "public right of way" to describe the area controlled by the state or a locality, to accommodate utilities and wireless broadband providers, like Mobilitie. This is likely due to the fact that these issues are nationwide and involve many states, cities, counties and so on. For MHTC, as with many other entities, utilities are confined to a set utility corridor. While variances are permitted and the utility corridor is expanded on occasion, as it relates to MoDOT utilities are limited to a defined space, parallel to and within six (6) feet of normal right of way. 7 CSR 10-3.010(3)(J) I imagine that other state DOTs and localities have similar limitations on utilities.

The lack of specificity in Mobilitie and FCC's language in referring to public right of way is concerning because it implicitly suggests that all public right of way is subject to FCC jurisdiction when FCC jurisdiction is limited to those areas designated for utility use, as well as for removing barriers to entry for telecommunications companies. See 23 USC 253: "Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government." As AASHTO's draft response aptly notes, use of right of way outside of highway right of way is typically driven by fair market valuation rather than a cost neutral fee.

There is also a lack of discussion in the FCC Public Notice regarding the safety of the travelling public or the potential conflict with other federal regulations, such as the FHWA regulations for state DOTs. See 23 CFR 645.209(a) "Safety. Highway safety and traffic safety are of paramount, but not of sole, importance when accommodating utility facilities within highway right-of-way."

A pretense of Mobilitie's petition is that its intended use of public right of way is similar to that of any other utility, like telephone company poles. This may be true in some instances, but MoDOT is aware of requests to install wireless structures well over one hundred (100) feet tall with a footprint that would engulf the entire six (6) foot utility corridor. Mobilitie, and its competitors, through the use of standalone towers are, in part, attempting to build super structures on public right of way. In the past structure of this height may have required more elaborate structures or guy wires and, therefore, a more substantial foot print. Further, allowing these structures in some instances may preclude the use of the limited corridor by any other utility. The danger here is for the FCC to issue a generic order that gives Mobilitie and other wireless broadband companies the argument that their request to build small cell towers of incredible height is no different than permitting a standard telephone pole when from a traffic safety perspective these towers may be radically different. The language Mobilitie uses is "similar access" but the use requested looks very different than of a cable or telephone company with standard poles.

In general, Mobilitie's complaints are centered on localities, as is the FCC Public Notice. As AASHTO notes, the character of state highways and right of way is quite different than that of localities. And the relationship of state DOTs management of federal aid highways right of way with FHWA is markedly different than that of localities and their public right of way and utility corridors. Mobilitie is asking for a one size fits all declaratory ruling applicable across the country. A ruling that does not provide context for the different missions and responsibilities of localities and states or fails to consider other federal statutes and regulations would likely create litigation to resolve state and federal law conflicts with the ruling. The issues raised are complex and, to the extent clarification on these issues is deemed necessary by the FCC, the formal rulemaking process is a better avenue for all entities to understand the actual policy directives of the FCC and to comment appropriately to specific items.

NEW MEXICO

In New Mexico there is legislation termed 'anti-donation clause' which goes beyond fair market value with consideration to public resources being accessed by the private sector. It also takes into account the value associated with those resources being used in the business model being pursued. Another interesting element is that information the NMDOT has received from the FHWA will allow for only one right of access for longitudinal alignments of utility infrastructure by for-profit (private) enterprises. With the build-out of that infrastructure, excess capacity would have to be supplied by that party to accommodate any other interested parties at a later time (i.e., fiber optics communications).

NORTH DAKOTA

Response to Public Notice – Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies
Mobilitie, LLC, Petition for Declaratory Ruling WT Docket No. 16-421

The North Dakota Department of Transportation (NDDOT) is submitting comments concerning the petition filed to the FCC by Mobilitie for Declaratory Ruling. Although this public notice is geared toward local authorities, NDDOT felt it was important to address concerns from a state DOT perspective.

NDDOT is authorized to and does accommodate utilities, installation and maintenance of utility facilities on the right-of-way in accordance with state and federal laws and regulations.[1] Any permitted utility within the right of way should not interfere with the free and safe flow of traffic, existing, planned or future use of the right-of-way for highway purposes, or impair its scenic appearance.[2] On Interstate and federal-aid highways, the Federal Highway Administration's (FHWA) rules concerning utility accommodation apply.

The NDDOT has established guidelines for utility accommodation within the document "A Policy for Accommodation of Utilities on State Right-of-Way".[3] Consistent with 23 CFR, the guidelines within are provided in the interest of developing and preserving safe highway operations and roadsides. Current NDDOT Policy does not allow longitudinal utility installations within the control access lines of the Interstate freeway except in special cases, but does allow crossings. NDDOT may adopt a more restrictive policy concerning a longitudinal utility along freeway right-of-way.[4] Non-freeway longitudinal utility installations are permitted along with crossings, but must be located as near to the right-of-way line as practical. NDDOT would oppose any action that would diminish its authority to manage and regulate the use of highway right-of-way.

NDDOT requires permit applications to be submitted to the specific district where the utility will be installed. North Dakota contains eight districts that have a specific utility coordinator who handles each permit request. There is no specified timeline for review, but each permit application is handled as they are submitted. There are many concerns that are being addressed in a permit application such as safety, current and future right of way use, etc. As a precedent setting permit application is received, additional review time should be expected, but over time, as policy decisions have been made, permit application timelines will become more streamlined. Limits on review times should not be set until agencies have

fully addressed all concerns with new types of utility installations, and completed any modifications to their federally required utility accommodation policies.

NDDOT has adopted a utility permit fee schedule that is developed on the basis of covering administrative costs. Permit fees are a one-time charge when a permit application is submitted. NDDOT believes that it applies these costs in a fair and reasonable manner to all utility companies. We are unaware of any complaints about unfair or excessive costs from the utility companies we have dealt with.

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[1] "Pursuant to the provisions of 23 CFR 1.23, it is in the public interest for utility facilities to be accommodated within the right-of-way of Federal-aid or direct Federal highway project when such use and occupancy of highway right-of- way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State, or local laws or regulations." 23CFR §645.205(a). See also, NDCC Sections 24-01-39 and 24-01-40.

[2] "The manner in which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such occupancy, where authorized, be regulated by transportation departments in a manner which preserves the operational safety and the functional operational safety and the functional and aesthetic quality of the highway facility. This subpart shall be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by transportation departments with respect to location and manner of installation." 23 CFR §645.205(c).

[3] http://www.dot.nd.gov/manuals/environmental/policy-utilities-state-row.pdf

[4] 23 CFR §645.209(a)(3).

OREGON

Oregon
Kate Brown, Governor

Department of Transportation
Maintenance and Operations Branch
455 Airport Road, Bldg. K
Salem, OR 97301
Phone: (503) 986-7915
Fax: (503) 986-3055

March 8, 2017

Oregon Department of Transportation (ODOT) is submitting comments concerning Mobilitie's Petition for Declaratory Ruling. Although the Public Notice is aimed toward local governments, ODOT is submitting comments from a state agency perspective.

The primary purpose of the state highway system is to provide for safe and efficient movement of traffic in and through the state. Generally, state highways carry more traffic and involve higher speed roadways than local government roads. The state highways and the associated property managed to maximize the public use for a transportation purposes under both state and federal law. In addition, the Oregon Constitution holds the highway system of Oregon in trust for the construction, maintenance and operation of roadways to facilitate the movement of motor vehicle traffic.

ODOT accommodates gas, water, electric, and communication service lines along with their associated facilities and fixtures within state highway right of way when the accommodation does not interfere with the regular use of the roadway. These public utilities are not charged a permit fee for this use. ODOT does not allow public utility facilities to be placed on signal poles or sign structures due to safety concerns.

Wireless facilities, are not considered a 'communication service line' under Oregon law so are not afforded free use of the state highway property; however may be allowed at ODOT's discretion by lease agreement at fair market value when the location is not needed for a transportation purpose during the term of the lease.

Mobilitie asserts that states and local governments are overcharging for use of public rights of way; this is not true for the state highway system in Oregon. The Oregon Constitution requires that fair market value be received for non-transportation uses of state highway property. The "fair market value" is determined at the time of the lease based on the nature of the use and land appraisals. When state highway property is not needed in the immediate future for a transportation purpose, ODOT may allow other uses of that property. Other entities either make arrangements with private property owners or lease ODOT property at fair market value when it's desired for the entity's business purposes. This method is no different for wireless facilities than for any non-transportation use of state highway property.

Oregon DOT does not support Mobilitie's Petition for Declaratory Ruling.

SOUTH DAKOTA

Response to Public Notice – Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies
Mobilitie, LLC, Petition for Declaratory Ruling WT Docket No. 16-421

The South Dakota Department of Transportation ("SDDOT") is submitting comments concerning Mobilitie's Petition for Declaratory Ruling. Although the Public Notice seeks comment on local governments' siting authority, SDDOT is submitting comments from perspective of a state transportation agency responsible for managing public rights-of-way, which are a focus of Mobilitie's petition.

SDDOT requests that the FCC deny Mobilitie's petition for the reasons stated below, grouped according to the *Potential Issues to Address in Declaratory Ruling* cited in the Public Notice. In addition, SDDOT requests that the FCC and FHWA coordinate to facilitate immediate fact-finding and disclosure to state DOTs regarding the potential scope, magnitude, and effect of the deployment of this technology in state and local highway right-of-way and the impact on connected and autonomous vehicles.

Practices that "Prohibit or Have the Effect of Prohibiting" Provision of Service

SDDOT opposes any action that would diminish its authority to properly manage and regulate the use of public highway right-of-way.

The primary function of state highways is to provide for safe and efficient movement of people and goods. State highways generally move higher traffic volumes over longer distances, carry more freight, and involve higher travel speeds than highways under local jurisdiction. Although SDDOT accommodates utilities, its primary responsibility is to maximize the public use and benefit of the right-of-way for transportation purposes and ensure that any utilities affecting the state right-of-way are installed, maintained, and accessed in compliance with state and federal law and regulation.[1] The permitted use and occupancy of right-of-way for non-highway purposes is subordinate to the primary and highest interest for transportation and safety of the traveling public.[2] On Interstate and federal-aid highways, the Federal Highway Administration's ("FHWA") rules concerning utility accommodation apply.

SDDOT has a permitting process for utilities to occupy the right-of-way. Most telecommunication facilities that SDDOT allows in the highway-right-of-way are underground communication fiber lines, which do not interfere with highway use. SDDOT does not allow utility facilities to be placed on existing highway structures such as luminaire poles, traffic signal poles, or sign bridges, due to safety and operational concerns. Mobility is unique in its request to install telecommunication pole towers of up to 120 feet in height. These pole towers would similarly affect highway safety and aesthetics in ways that directly concern SDDOT and local governments. Additionally, highway construction and maintenance projects could often impact pole tower sites located in the right-of-way and potentially disrupt telecommunications facilities and service to the public at increased cost.

To preserve safe and efficient traffic operations, SDDOT does not allow above-ground utilities to be placed within the clear zone of the highway facility, except in extraordinary circumstances.[3] In those rare situations, protective measures such as breakaway features, impact attenuating devices, or barriers are required to reduce safety hazards and address concerns resulting from errant vehicles. While these measures reduce crash severity, they do not eliminate the safety risks during utility installation, maintenance, and servicing. Even with mitigation devices, above-ground utilities such as poles pose safety risks.

For Interstate highways, no utility installation that adversely affects public safety is allowed.[4] Furthermore, SDDOT may adopt a more restrictive policy concerning a longitudinal utility installation along freeway rights-of- way.[5] South Dakota Administrative Rule 70:04:05:01:01 prohibits longitudinal utility installations within the Interstate right-of-way, except that longitudinal installations of fiber-optic telecommunications cable are allowed as near the edge of right-of-way as practical. Because the safety and efficiency of controlled access Interstate highways depend upon limiting traffic access to defined entrance and exit points, SDDOT is particularly concerned about traffic entering and exiting Interstate highway rights-of-way at uncontrolled locations to install, maintain, and operate telecommunications facilities.

SDDOT obtains highway right-of-way through Tribal lands and Federally-owned lands, such as those managed by the U. S. Department of Interior, strictly for highway use only. Non-highway uses such as utility accommodation are not under the State's jurisdiction. A utility permit granted by the SDDOT does not relieve a utility of the obligation to obtain any other permit, license, or other approval required by other entities holding a property interest in the right-of-way, such as Tribal governments, the South Dakota Office of School and Public Lands, the U.S. Forest Service, the Bureau of Indian Affairs, and many others. Local governments and other federal agencies may require coordination andapprovals.[6]

Reasonable Period of Time for Review of Siting Applications

SDDOT opposes rigid time limits for review of siting applications at this time.

SDDOT agrees that timely responses to siting applications should be provided, but feels that short turnaround cannot be guaranteed. The burgeoning requests for deployment of small cell infrastructure have caught state and local agencies without adequate time to develop well-founded policies and criteria for siting approvals. The nature and extent of the deployment and the potential impact on highway infrastructure are not yet well understood. Limits on review periods should not be set until agencies have been given a reasonable opportunity to develop policies and procedures consistent with their federally required utility accommodation policies and, if necessary, to modify their policies in response to the scope, magnitude, and needs of the new technology.

Appropriate time periods for individual or group site applications may vary, depending on specific circumstances. In one respect, group applications are preferable because sites in the group may share common attributes. In contrast to a piecemeal series of individual applications, a well-fashioned group application may provide greater insight into the ultimate deployment

configuration. Due to the larger number of sites that must be reviewed, a group application would typically require more time than an individual application, but less than the total time required to review an equivalent series of individual applications.

Application Processing Fees and Charges for Use of Rights-of-Way

SDDOT opposes restricting fees to costs related only to reviewing and issuing permits and managing rights-of-way.

Section 253(c) provides that "nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunication providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."[7]SDDOT believes that the wording "compensation…for use" rather than "compensation for…associated costs" (for example) is significant. In the case of state highways, the right-of-way represents a public investment of many millions of dollars made over decades, and it is unreasonable to argue that its use has no value to the public or to utilities or that the value of right-of-way remains constant over time. Requiring compensation that reflects prevailing market value for use is inherently "fair and reasonable".

Furthermore, ultimate costs to state and local agencies extend beyond immediate administrative and maintenance costs. The presence of collocated telecommunications facilities may limit options for transportation facility improvement, expansion, and rehabilitation and increase the cost of future public highway improvements and right-of-way acquisition.

Limiting compensation to recovery of immediate administrative and maintenance costs could also discourage more innovative arrangements that would provide greater overall public benefit. For example, in South Dakota, permission for fiber communication lines to occupy highway right-of-way was granted with the provision that service be extended to public schools and local government agencies. The arrangement was mutually beneficial to the telecommunications industry and the public interest, but would not have been allowed under the restrictions proposed by Mobilitie. Such restrictions could be particularly harmful in the current era of connected and autonomous vehicle deployment, where public-private partnerships to establish or share roadside communications infrastructure for transportation purposes could be tremendously beneficial to transportation safety and efficiency.

SDDOT disagrees with the contention that the phrase "competitively neutral and nondiscriminatory" means that charges imposed on one provider for access to rights-of-way cannot exceed charges imposed on other providers for similar access.

Even if compensation were to be restricted to recovery of administrative and right-of-way maintenance costs, those costs would not remain constant over time or uniform among locations. If, as SDDOT advocates, compensation should also include a fair and reasonable charge for use, rates would vary. Furthermore, physical constraints may make siting a later provider more difficult and expensive than siting the initial provider. Requiring public agencies to fix compensation charges to the lowest rate ever given to any provider would be comparable to

requiring telecommunication service providers to maintain fixed, equal rates for all customers, forever.

SDDOT accepts the concept of open reporting of fees.

Section 253(c) already requires public disclosure of compensation terms. Disclosure is consistent with state policy.

[1] "Pursuant to the provisions of 23 CFR 1.23, it is in the public interest for utility facilities to be accommodated within the right-of-way of Federal-aid or direct Federal highway project when such use and occupancy of highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State, or local laws or regulations." 23CFR §645.205(a).

[2] "The manner in which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such occupancy, where authorized, be regulated by transportation departments in a manner which preserves the operational safety and the functional operational safety and the functional and aesthetic quality of the highway facility. This subpart shall be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by transportation departments with respect to location and manner of installation." 23 CFR §645.205(c).

[3] 23 CFR §645.207 & 23 CFR §645.209(a)&(b).
[4] 23 CFR §645.209(c)(2)(i).
[5] 23 CFR §645.209(a)(3).
[6]23 USC §135(f)(2) and 23 CFR§450.208,§450.214, §450.216, and $450.316.
[7]47 U. S. C.§253(c).

TEXAS

Subject: Comments re: AASHTO Work Group - FCC Public Notice - Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies (WT Docket No. 16-421)

The Texas Department of Transportation ("TxDOT") is submitting comments concerning Mobilitie's Petition for Declaratory Ruling. Although the Public Notice references comments towards the local governments, TxDOT is submitting comments to AASHTO from a state DOT perspective regarding its practices with permitting and leasing its ROW to utilities and others as well as its experience with small cell carriers.

TxDOT's primary concerns allowing third parties in its ROW are 1) safety – *e.g.* maintaining an appropriate and uncongested clear zone, 2) expeditious delivery of transportation projects, such that any occupying entities do not cause delay and incur costs to future projects and 3) stewardship of public resources, such that TxDOT receives the appropriate compensation for the use of taxpayer resources.

TxDOT has broad authority to lease its real property assets, including but not limited to right of way, pursuant to the following: Transportation Code, §202.052, Title 43 Texas Administrative Code (43 TAC) §§21.600 to 21.606, and Title 23 Code of Federal Regulations (23 CFR) §§710.405 to 710.407. The property to be leased must be surplus to TxDOT's needs for the term of the lease, and the consideration for the lease must be at least fair market value, as typically established by an appraisal. This is a different standard of value than is advocated by Mobilitie in its petition.

Transportation Code Sec. 202, Subchapter E ("Control of Transportation Assets; Telecommunication Facilities") permits (but does not mandate) the potential leasing of state highway for the placement or sharing of telecommunication facilities of or by others on certain portions of the right of way, either under TxDOT's general leasing authority (Sec. 202.052) or through an agreement under Sec, 202.093 (requiring a competitive sealed proposal process). Leasing and Agreements could involve compensation being paid to TxDOT, either in the form of cash or the shared use of the facilities.

Additionally, TxDOT has limited obligation to permit, for no cost, public utilities that also have a statutory right to occupy TxDOT right of way. TxDOT's Utility Accommodation administrative rule, 43 TAC Section 21.31(40), recognizes this, as evidenced by its definition of "public utility" ("A person, firm, corporation, river authority, municipality, or other political subdivision that is engaged in the business of transporting or distributing a utility product that directly or indirectly serves the public and that is authorized by state law to operate, construct, and maintain its facilities over, under, across, on, or along highways"). Thus, a public utility's ability to occupy pubic right of way exists only when it has been expressly authorized by the Legislature. Texas courts have strictly construed statutes authorizing corporations to place fixtures in public road right-of-way.

TxDOT has recently seen a surge of (no-cost) utility permit requests from various wireless telecommunications infrastructure providers for the installation, within state highway right of way, of pole-mounted "small" cell antennae/transmitters and associated facilities. Recently, some entities have requested permits for relatively low powered units which receive and transmit wireless data mounted on poles with pole heights ranging from 30 feet up to 120 feet and site placements ranging from 500 feet to 2,000 feet from other telecom facilities.

These entities contend that they are "telephone corporation[s]," as defined by Utilities Code Section 181.081, and therefore have a clear and express statutory authority to occupy highway right of way by the reason of Utilities Code Sec. 181.082: "(a) telephone…corporation may install a facility of the

corporation along, on, or across a public road, a public street, or public water in a manner which does not inconvenience the public in the use of the road, street, or water".
Utilities Code Sec. 181.081 defines a "telephone corporation" in a vague, somewhat antiquated manner, as "a corporation created to construct and maintain telephone lines" (underlined emphasis added).

The requesting entities also claim to be public utilities by reason of having a Service Provider Certificate of Operating Authority (SPCOA") issued by the Texas Public Utility Commission. However, as stated above, even if this certificate established these entities as "public utilities," they would still need to claim a specific legislative authorization to occupy ROW.

Currently, TxDOT does not have a uniform program in place for handling requests by carriers of this type to occupy its ROW. Inconsistency in industry application status, safety siting requirements and priority of transportation project management have delayed establishment of a uniform program.

To the extent that Mobilitie's petition seeks to change the standard of value for the use of TxDOT ROW from "fair market value" to only represent those costs related to issuing permits and managing rights of way, that finding would be in contravention of State law.

UTAH

Response to Public Notice – Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies
Mobilitie, LLC, Petition for Declaratory Ruling
WT Docket No. 16-421

The Utah Department of Transportation ("UDOT") is submitting comments concerning Mobilitie's Petition for Declaratory Ruling. Although the Public Notice references comments towards the local governments, UDOT is submitting comments from a state perspective.

The primary function of the state highways is to provide for the safe and efficient movement of traffic. Utah Code §72-4-102.5(2)(c). In addition, a state highway shall primarily move higher traffic volumes over longer distances than highways under local jurisdiction. Utah Code §72-4-102(3)(b). The state highways general involve higher speed highways than local government highways. Although UDOT does accommodate utilities, the primary purpose of the state right-of-way is to maximize the public use of the right-of-way for transportation purposes and to ensure that utility installations and operations affecting the state right-of-way are installed and accessed in compliance with state and federal law.[1] The permitted use and occupancy of right-of-way for non-highway purposes is subordinate to the primary and highest interest for transportation and safety of the traveling public.[2] With the interstate highways and federal-aid projects, the Federal Highway Administration's ("FHWA") rules concerning highways apply.

UDOT does accommodate telecommunication facilities within the right-of-way.[3] For non-interstate or limited access highways, UDOT does not charge a lease fee for utility companies that provide a service to the public. Only the actual costs for processing a permit and inspections fees are charged. Most telecommunication facilities are fiber lines within a conduit that are located underground. This use does not conflict with the highway use. UDOT does not allow any utility facilities to be placed on the light signal poles due to safety concerns. Telecommunication pole towers installations that are 45 to 120 feet create conflicts with the transportation use of the highway because of safety issues.

UDOT has a policy to provide clear zones to increase safety and improve traffic operations. In the clear zone, UDOT does not allow the installation of utility poles and other ground mounted structures. Reducing hazards include placing utility facilities that are above ground at locations which protect out-of-control vehicles, using breakaway features, using impact attenuation devices, or shielding. Even with the mitigation devices, the pole towers are problematic.

The clear zone is the entire roadside border area starting at the edge of the traveled way, available for the safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, a non-recoverable slope, and the area at the toe of the recoverable slope. The actual width is dependent upon traffic volumes and speeds, and roadside geometry. [4] *See* Exhibit A for the summary for *A Guide for Reducing Collusions Involving Utility Poles*. The plan shall determine the effects of the utility installations and traffic safety.

UDOT acquires all interest for access, air, light, and view for interstate highways. For interstate highways, no installation of utility facilities will be allowed if they adversely affect public safety.[5] Furthermore, UDOT is allowed to adopt a more restrictive policy concerning a longitudinal utility installation along the freeway right-of-way. [6] Longitudinal telecommunication access is allowed according to Utah Code §72-7-108. However, UDOT is obligated to charge compensation from the telecommunications facility provider for the use of the right-of-way. UDOT has adopted the schedule of fees for interstate highway in Utah Administrative Code R907-65. *See* Exhibit B. UDOT's statute and rule complies with the freeway accommodation policy as stated in the FHWA Program Guide – Utility Relocation and Accommodation on Federal-Aid Highway Projects. *See* Exhibit C. Other telecommunication companies are paying the fees.

In regard to fees for permits, a highway authority may only recover management costs the utility service provider causes by being within the right-of-way. The fee or other compensation must be on a competitively neutral basis. A highway authority may not use the compensation authority as a means to generate revenue for the highway authority in addition to the management costs. Utah Code §72-7-102(4). Mobilitie's assertions concerning overcharging by state and local governments are incorrect in the State of Utah.

UDOT will charge the industry standard of 5 to 10% of the land value for leases of property that are not being used as right-of-way. The value is determined by appraisals whether ordering one for that specific site or based upon other recent appraisals of property in the area. Because of the number of highway construction projects, UDOT orders numerous appraisals. This approach is used for all persons or entities who want to lease UDOT property. At the time of the lease, the value should be determined based upon appraisals. Other telecommunication companies either lease private property or UDOT property for the cell tower sites. Mobilitie is unique in its attempt to install pole towers (transport or mini-macro poles) within public right-of-way. Conventional cell tower cites are less likely to be impacted by highway construction projects, which will cause less disruption to the telecommunications facilities and service to the public.

In addition, the Utah Public Service Commission ("PSC") has approved rates for the utility attachment agreements between Rocky Mountain Power and any utility that desires to attach to the power poles. The terms are standard unless the PSC approves the term change. Currently, Mobilitie has a signed pole agreement with Rocky Mountain Power. Unfortunately, this document could not be attached because the document is protected at Mobilitie's request. The PSC ensures that same rates apply to all utility companies.

UDOT requests that the FCC deny Mobilitie's petition because Mobilitie is not being overcharged for fees to access the local government right-of-way and UDOT has the authority to deny installations for safety reasons. Furthermore, UDOT is allowed to charge market value based upon appraisals for the use of the interstate highway right-of-way.

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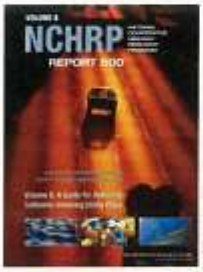
1. "Pursuant to the provisions of 23 CFR 1.23, it is in the public interest for utility facilities to be accommodated within the right-of-way of Federal-aid or direct Federal highway project when such use and occupancy of highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do

not conflict with the provisions of Federal, State, or local laws or regulations." 23 CFR §645.205(a).

2. "The manner is which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such occupancy, where authorized, be regulated by transportation departments in a manner which preserves the operational safety and the functional operational safety and the functional and aesthetic quality of the highway facility. This subpart shall be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by transportation departments with respect to location and manner of installation." 23 CFR §645.205(c).
3. Within city limits, UDOT does not control the right-of-way behind back of curb.
4. 23 CFR §645.207
5. 23 CFR §645.209(a)(2)(ii)
6. 23 CFR §645.209(a)(3)

EXHIBIT A



A Guide for Reducing Collisions Involving Utility Poles

DETAILS

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AUTHORS

SECTION I

Summary

Introduction

The AASHTO Strategic Highway Safety Plan identified 22 goals to be pursued to achieve a significant reduction in highway crash fatalities. One of the hallmarks of the plan is to approach safety problems in a comprehensive manner. The range of strategies available in the guides will ultimately cover various aspects of the road user, the highway, the vehicle, the environment, and the management system. The guides strongly encourage the user to develop a program to tackle a particular emphasis area from each of these perspectives in a coordinated manner.

AASHTO's overall goal is to move away from independent activities of engineers, law enforcement, educators, judges, and other highway safety specialists and to move to coordinated efforts. The implementation process outlined in the series of guides promotes the formation of working groups and alliances that represent all of the elements of the safety system. In so doing, the guides can draw upon their combined expertise to reach the bottom-line goal of targeted reduction of crashes and fatalities associated with a particular emphasis area.

This emphasis area is specifically identified in Goal 16, *Minimizing the Consequences of Leaving the Road*. Utility pole crashes are a subset of run-off-road (ROR) crashes. Emphasis Area 16.1 addresses the general subject of ROR crashes and covers strategies aimed at reducing the consequences of ROR crashes by (1) keeping vehicles from leaving the roadway and (2) reducing the severity of impacts after leaving the roadway. Ideally, keeping the vehicle on the roadway and in its appropriate lane is preferred. The reader should refer to the other strategy documents for strategies aimed at keeping the vehicle on the roadway. This guide focuses on measures directed at reducing the harm in utility pole crashes after encroachment on the roadside has occurred—strategies such as removing or relocating specific utility poles, placing utilities underground, and shielding motorists from utility poles.

Utility pole crashes are fixed-object crashes that involve vehicles leaving the travel lane, encroaching on the roadside, and striking a utility pole.

Utility poles can also contribute to the severity of other crash types. Many crashes are not classified as ROR or fixed-object crashes where one or more vehicles strike a utility pole. Crashes are often classified by "first harmful event." In some cases, striking the utility pole is a secondary event that may be as severe as, or more severe than, the first harmful event. Crashes involving utility poles as secondary events easily go unnoticed when examining the total magnitude of the utility pole crash problem.

are impractical, this approach includes strategies that redirect errant vehicles, lessen the severity of impacts, or alter the operating conditions to create less severe impact conditions.

Exhibit I-2 lists the objectives and several related strategies for reducing the consequences and frequency of utility pole crashes. This exhibit does not represent a listing of all possible strategies to reduce the frequency and severity of utility pole crashes. For example, many strategies that focus on keeping vehicles on the roadway are not listed, but they would be very effective in reducing utility pole crashes. The reader may refer to the guides that specifically address the ROR crash issue for details on these strategies.

EXHIBIT I-2
Emphasis Area Objectives and Strategies

Objectives	Strategies
16.2 A Treat specific utility poles in high-crash and high-risk spot locations.	16.2 A1 Remove poles in hazardous locations.
	16.2 A2 Relocate poles in hazardous locations further from the roadway or to a less vulnerable location.
	16.2 A3 Use breakaway poles.
	16.2 A4 Shield drivers from poles in hazardous locations.
	16.2 A5 Improve the drivers' ability to see poles in hazardous locations.
	16.2 A6 Apply traffic calming measures to reduce speeds on high-risk sections.
16.2 B Prevent placing utility poles in high-risk locations.	16.2 B1 Develop, revise, and implement policies to prevent placing or replacing poles within the recovery area.
16.2 C Treat several utility poles along a corridor to minimize the likelihood of crashing into a utility pole if a vehicle runs off the road.	16.2 C1 Place utilities underground.
	16.2 C2 Relocate poles along the corridor farther from the roadway and/or to less vulnerable locations.
	16.2 C3 Decrease the number of poles along the corridor.

Target of the Objectives

The first objective addresses the locations that have a collision history or are recognized as high-risk locations. The application of these strategies is generally limited to a single pole or a few poles. For example, one pole on the outside of a horizontal curve can be moved to a less exposed location on the inside of the same curve. The target of the second objective is placing new utility poles along the roadway or relocating poles for 3R projects or other roadway projects, including widening. In addition, the second objective targets poles that will be replaced when utility companies periodically reconstruct their facilities. The third objective targets utility poles along longer sections of roadway where crashes are spread out along the corridor and not clustered around a small number of poles. It is important to mention that cooperation is a joint responsibility between highway agencies and utility companies and is an essential ingredient to promoting utility safety.

Type of Problem

Utility poles represent one of the more substantial objects that are intentionally placed on roadsides. "The U.S. has over 88 million utility poles on highway rights-of-way."[1] They are substantial both in sheer number and in structural strength. The only object type more frequently struck in fatal fixed-object crashes is trees.[2] Because of the structural strength and small vehicle contact area of utility poles, these crashes tend to be severe.

In 2002, there were 1,008 fatal crashes[3] associated with utility poles reported in the Fatality Analysis Reporting System (FARS; see http://www-fars.nhtsa.dot.gov/). Although the National Highway Traffic Safety Administration (NHTSA) General Estimates System (GES) does not report utility pole crashes separately, the data for 1999 show that fatal crashes were only about 1 percent of all pole crashes. However, about 40 percent of pole crashes involve some type of injury. The data also show that about 25 percent of pole crashes occur in adverse weather conditions, and only about half occur in full daylight, while another 25 percent occur under lighted conditions at night.

EXHIBIT I-1
Distribution of Maximum Severity for Pole Crashes

Crashes with all poles, including utility poles
Source: GES 1999

Objectives of the Emphasis Area

To reduce the severity and number of fatality utility pole crashes, the objectives should be to

- Treat specific utility poles in high-crash and high-risk spot locations,
- Prevent placing utility poles in high-risk locations, and
- Treat several utility poles along a corridor to minimize the likelihood of crashing into a utility pole if a vehicle runs off the road.

A comprehensive safety program to address utility pole crashes would be missing very important opportunities if non-engineering methods were not also considered. While not

[1] "Safer Roadsides Through Better Utility Pole Placement, Protection, Construction," *Texas Transportation Researcher*, Volume 35, Number 1 (1999).
[2] American Association of State Highway and Transportation Officials. *Roadside Design Guide*. AASHTO, Washington, D.C. January 1996.
[3] This number was obtained assuming that the collision with the utility pole was the first harmful event in the fatal crash.

specifically targeting pole crashes, some of these methods, such as increased speed enforcement and increased use of seatbelts, can help reduce the severity and risk of utility pole crashes. These systemic strategies have a much broader reach than utility pole or fixed-object crashes. However, the authors encourage the reader to refer to the guides that specifically address these strategies and to work with the appropriate agencies to apply the strategies.

Explanation of the Objectives

A multifaceted approach is ideal and includes combining the efforts of highway agency and utility personnel, treating existing isolated problem locations and high-risk sites, preventing the development of new high-risk sites, and systematically reviewing and treating high-risk corridors. The time and cost to relocate or remove utility poles sometimes causes the strategy to receive less attention than is appropriate to effectively reduce the severity and impact of utility pole crashes. The lack of attention received by this strategy is a reason to develop a focused and well-documented program to maximize the safety improvements' effectiveness.

The first objective represents an approach to identify and treat locations with a history of utility pole crashes. While many agencies have not kept the necessary data to systematically identify high-risk locations in a proactive approach, other techniques such as safety audits can be used to flag high-risk locations for investigation and possible treatment. Strategies for this objective focus on a relatively small number of poles in high-risk locations that may need a rapid response.

A comprehensive safety program should always have a prevention component. Utility pole crashes are not an exception. The design and construction phases of roadway and utility projects are the best opportunities to practice "preventative medicine" by not placing poles in vulnerable locations. The strategy for meeting this objective is generally a long-term, systemic approach that requires steady and consistent application. The opportunities for application range from initial design of new facilities, 3R (resurfacing, restoration, and rehabilitation) projects, and utility rehabilitation, to even smaller projects where turn lanes are built with private funding, such as by developers.

One of the major hurdles of safety programs targeting utility poles is the sheer number of poles on the roadside. It took decades to "plant" all the poles on the roadside. Utility poles were along roadsides when horses were drawing carriages. Therefore, it is unrealistic and unnecessary to expect to treat all the poles at the same time. A program is needed with both short-term and long-term components. These components should target and treat both the high-risk poles (such treatment tends to be done in the short term) and systematically treat poles along corridors on a continuing basis. This two-pronged approach helps avoid overwhelming agencies, utility companies, or other potential stakeholders. This approach recognizes that it is not financially possible to fix all the potentially hazardous poles immediately. Nevertheless, organized and targeted strategies to treat roadsides over time can significantly reduce the likelihood of a vehicle striking a utility pole or of that event causing injuries.

Often, it is not feasible to remove, relocate, or place underground the utilities carried by potentially hazardous roadside poles. However, it may be possible to lessen the severity of injuries involved in crashes where a vehicle does strike such a pole. When other objectives

EXHIBIT B

R907. Transportation, Administration.
R907-65. Compensation Schedule for Longitudinal Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities.
R907-65-1. Purpose.

The purpose of this rule is to implement a compensation schedule for longitudinal access to the rights-of-way of the interstate system for installation and operation of telecommunications facilities. This Rule establishes the methodology and schedules for charging compensation in accordance with Subsection 72-7-108(3)(b). Subsection 72-7-108(3)(b) requires that the compensation be:

fair and reasonable;

competitively neutral;

nondiscriminatory;

open to public inspection;

established to promote access by multiple telecommunication facility providers;

established for zones of the state, with zones determined based upon factors that include population density, distance, numbers of telecommunication subscribers, and the impact upon private right-of-way users;

established to encourage the deployment of digital infrastructure within the state.

R907-65-2. Authority.

Subsection 72-7-108(3)(c) states that the department shall establish a schedule of rates of compensation for longitudinal access granted under that section, and shall do so beginning October 1, 1999, and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R907-65-3. Background.

The department has conducted an analysis of right-of-way values for the interstate system using current market data on (1) Utah real property values differentiated by location (northern Utah (Salt Lake City/surrounding counties), central Utah (Provo/surrounding counties), and southern Utah (Cedar City/St. George/surrounding counties), population density (urban, rural) and land use (residential, commercial, industrial, agriculture) and (2) appraisal values from department land acquisitions. These data were applied to fifteen right-of-way segments of the interstate system that the department defined based on various factors, including but not limited to location, similarity of land use, population density and number of telecommunications subscribers. Segment land values were then calculated based on the relevant "across-the-fence" property values and the following core assumptions:

Land needed for longitudinal installations of telecommunications facilities, including a buffer zone, will generally be 6 feet in width.

Values for preassembled right-of-way for longitudinal access are 200% of values for non-assembled right-of-way.

Values for underground use of right-of-way for longitudinal access are 50% of values for ground level and aboveground use.

Upper and lower bound real property values establish a valuation range for each segment. Point estimates of segment land values are

calculated at the 30th percentile within this range.

Segment land values (reported in $/ft^2) are converted to $/mile using the following formula:

Segment land value ($/mile) = Segment land value ($/ft^2) x 5,280 ft/mile x easement width (6 ft).

The fifteen segments were then grouped into five zones based on similarities in segment attributes and values. For example, the rural segments of I-15, I-70 and I-84 were grouped to create zone 1, while the urban segment of I-15 traversing Salt Lake City was grouped with I-215 to create zone 5. Similar groupings make up zones 2, 3 and 4. Through this process, the department defined five zones with a weighted average land value for each zone.

The department then determined annual lease valuation, as a rate of return on the land values for each zone, using current market data. The department determined that a 10% annual rate of return on investment represents a fair and reasonable compensation rate in current market conditions.

The department also received and considered recommendations on rates of compensation from the Utility in Highway Rights-of-Way Task Force pursuant to Section 6(2)(a) of S. B. 150.

R907-65-4. Definitions.

The definitions of terms in R907-64-3 apply to the same terms used in this Rule. This Rule uses the following additional defined terms:

(1) "Land value" means the fair market value of land within the right-of-way of the interstate system as determined by the department under the core assumptions set forth in R907-65-3 and established for compensation purposes under R907-65-6.

(2) "Rate of return" means the annual rate of return on investment, using land value, as determined by the department and established for compensation purposes under R907-65-7.

(3) "Zone" means a group of right-of-way segments of the interstate system as determined by the department and established for compensation purposes under R907-65-5.

R907-65-5. Compensation Zones.

(1) Five zones of the State are established for purposes of determining land values and compensation rates for longitudinal access to the right-of-way of the interstate system.

(2) The five zones are:

Zone 1 - Segments traversing primarily rural, agricultural areas with low population density. The two primary segments in this zone are located south of Provo, extending to Arizona along I-15 and to Colorado along I-70. This zone also includes shorter segments of I-80 and I-84 bounded by the Wyoming and Nevada State lines respectively. Approximately 90% of this zone borders agricultural land.

Zone 2 - Segments traversing primarily sub-rural areas with low population density. Segments in this zone are located in the north-central, north-eastern and north-western regions of the State. Land usage is primarily agricultural (approximately 75%), with light pockets of industrial, commercial, and residential land usage.

Zone 3 - Segments traversing sub-rural/suburban land around the

State's metropolitan areas with medium population density. Segments in this zone are located outside the Salt Lake City metropolitan area. Land usage is mixed; while agriculture still makes up the largest proportion of land usage, about one-third of the land is residential, and slightly less than one-third is commercial and industrial.

Zone 4 - Segments traversing suburban/urban areas with medium/high population density. Segments in this zone run on a north-south route on I-15 through the Salt Lake City metropolitan area. Land usage in this zone is mixed, with the greatest proportion categorized as industrial, followed by residential, then commercial, and small pockets of agricultural usage.

Zone 5 - Segments traversing the densely populated urban areas. Segments in this zone are located in and around Salt Lake City. Nearly half is categorized as residential, and the rest is split between industrial and commercial usage, with very small pockets of agricultural usage.

(3) The existing right-of-way of the interstate system is placed into the five zones as set forth in Table 1. Whenever new right-of-way is added to the interstate system, the department shall modify Table 1 to classify the new right-of-way into the applicable zone or zones and publish the modified Table 1.

(4) At least once every five years the department shall conduct an analysis to determine changes, if any, in the boundaries of zones based on demographic and market data, including but not limited to data on similarity of surrounding land uses, population density, distances and number of telecommunications subscribers. The department shall publish a modification to Table 1 whenever zone boundaries are changed.

TABLE 1
Compensation Zones

Zone/Segment	Reference Post (from -- to)	Mileage
Zone 1		575
I-15: Payson South Int. to Arizona	252 -- 0	252
I-84: Tremonton to Idaho	43 -- 0	43
I-80: Wyoming to Silver Creek Int.	198 -- 148	50
I-70: Entire Route	0 -- 230	230
Zone 2		212
I-15: Idaho to Weber-Box Elder Co. Line	404 -- 354	50
I-15: Springville Int. to Payson South Int.	263 -- 252	11
I-84: Echo to SR-89	120 -- 88	32
I-84: SR-89 to I-15	88 -- 81	7
I-80: Magna Int. to Nevada	112 -- 0	112
Zone 3		50
I-15: Weber-Box Elder Co. Line to Parish Lane Int.	354 -- 323	31
I-80: Silver Creek Int. to Mouth		

of Parley's Canyon	148 -- 129	19
Zone 4		60
I-15: Parish Lane Int. to Salt Lake-Utah Co. Line	323 -- 288	35
I-15: Salt Lake-Utah Co. Line to Springville Int.	288 -- 263	25
Zone 5		47
I-80: Mouth of Parley's Canyon to Magna Int.	129 -- 112	17
I-215: Entire Route	0 -- 30	30

R907-65-6. Land Values.

(1) Land values for longitudinal access for telecommunications facilities are established, by zone, as set forth in Table 2. Whenever new right-of-way is added to the interstate system and a zone or zones are established for such new right-of-way under R907-65-5(3), the land value for such zone or zones set forth in Table 2 shall apply to such new right-of-way.

(2) At least once every five years, the department shall conduct a market analysis to determine the fair and reasonable values of the right-of-way of the interstate system for longitudinal access for telecommunications facilities. The department shall determine this value for each zone. The department shall publish a modification to Table 2 whenever the department completes a market analysis and determines that values of the right-of-way have changed.

(3) In determining land values, the department shall disregard any circumstance in which the department's interstate right-of-way is the only viable alternative for installing and operating telecommunications facilities between relevant geographic markets. The department shall adjust such values to those which would exist if another viable alternative existed for installing and operating comparable telecommunications facilities such that the department would not possess monopolistic market power in the subject location.

TABLE 2

Land Values ($/mile)

Zone	Miles in Zone	Weighted Average Land Value
Zone 1	575	$8,000
Zone 2	212	$22,000
Zone 3	50	$48,000
Zone 4	60	$80,000
Zone 5	47	$124,000

R907-65-7. Rate of Return.

(1) An annual rate of return on land value of 10% is established for purposes of determining annual compensation rates for longitudinal access to the right-of-way of the interstate system.

(2) At least once every five years the department shall conduct an analysis to determine changes, if any, in the rate of return based

on market data. The department shall publish a modification to the rate of return whenever the department completes a market analysis and determines that market rate of return has changed.

R907-65-8. Base Compensation Schedule.

(1) The department shall charge compensation for longitudinal access for telecommunications facilities so that the department receives, on an annual basis, the rate of return on the value of land in each zone established under this Rule which is utilized for overhead, surface or underground installations of telecommunications facilities, subject to adjustment under R907-65-10 and potential discount under R907-65-11.

(2) The compensation charged shall be set forth in the agreement between the department and the telecommunications facility provider pursuant to R907-64.

(3) The annual compensation to be paid by each telecommunications facility provider which enters into an agreement with the department for longitudinal access shall be determined under the following formulas:

Land values by zone are translated into annual compensation rates ($/mile) using the following formula:

Annual compensation rate per zone ($/mile) = zonal land value ($/mile)(from Table 2) x rate of return (currently 10%)

Total annual compensation shall then be calculated as follows:

Total annual compensation per zone = annual compensation rate per zone ($/mile) x # of miles accessed.

For telecommunications facility providers seeking a route that accesses multiple zones, the above calculations shall be made for each zone then summed to calculate total annual compensation for the requested access route.

R907-65-9. Compensation for Use of Department Conduit.

(1) The land values set forth in Table 2 (and therefore the annual base compensation amounts) do not include the value of any spare conduit which the department owns. The department is authorized to offer use of and access to its spare conduit to telecommunications facility providers, provided the department determines the spare conduit is not and will not be needed for highway purposes and the department receives additional compensation for the use of and access to the spare conduit.

(2) Such additional compensation shall be fair and reasonable to the department and the telecommunications facility provider and shall be charged in a competitively neutral and nondiscriminatory manner to all similarly situated telecommunications facility providers. The department shall establish the amount of compensation for use of and access to the department's spare conduit by zone.

(3) Such additional compensation shall be subject to adjustment annually in the same manner as provided in R907-65-10.

(4) At least once every five years the department shall conduct an analysis to determine changes, if any, in the value of its spare conduit. Whenever the department completes a market analysis and determines that value of its spare conduit has changed, the department shall apply its new values to each agreement thereafter executed by the department.

R907-65-10. Adjustments to Base Compensation Schedule for Annual Payments.

(1) The base compensation schedule for each calendar year after a year in which the department determines land values under R907-65-6 shall be adjusted effective January 1 of each such calendar year (each an "adjustment date"). The adjustment shall be calculated by multiplying the base compensation amount for the immediately preceding calendar year by a fraction. The numerator of the fraction shall be the "All Items, Consumer Price Index for All Urban Consumers (CPI-U) for the West (1982-84=100)," reported by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), published for the month of September immediately preceding the adjustment date in question. The denominator of the fraction shall be such index published for the next preceding month of September. The adjustment may result in an increase or decrease in the base compensation schedule.

(2) If the methodology for determining the index is changed by the issuer of the index, the department shall convert the index in accordance with the conversion factor published by the issuer of the index. If the index is discontinued or changed so that it is not practical to obtain a continuous measurement of price changes, the department shall replace the index with a comparable governmental index and apply the index chosen to all agreements which require annual adjustment to the base compensation.

(3) Except as provided in R907-65-11, each agreement for longitudinal access to the right-of-way of the interstate system with telecommunications facilities providers shall require that the rates of compensation during the first calendar year of the term of the agreement equal the base compensation schedule determined for that calendar year under this Rule (prorated if the term begins after January 1), taking into account any adjustments under R907-65-10(1).

(4) Except as provided in R907-65-11, each agreement for longitudinal access to the right-of-way of the interstate system with telecommunications facilities providers shall require an adjustment in the annual base compensation effective January 1 of each subsequent calendar year of the term (prorated for the last year of the term if it ends before December 31). The adjustment shall be calculated by multiplying the base compensation amount for the immediately preceding calendar year (annualized for partial calendar years during the term) by the fraction described in R907-65-10(1).

(5) It is the intent of this Rule that revisions to the base compensation schedule resulting from re-analysis of market conditions by the department pursuant to R907-65-5(4), R907-65-6(3), R907-65-7(2) and R907-65-9(4) shall apply only to agreements executed after the department completes and issues its revisions, and shall not apply to agreements executed prior to the revision. It also is the intent of this Rule that annual adjustments to the base compensation schedule due to inflation or deflation pursuant to R907-65-10(1) shall apply to every agreement under which annual compensation payments are required.

R907-65-11. Compensation Prior to Construction of Telecommunications Facilities.

(1) The department may charge compensation for the period of

time between execution of the agreement and completion of construction at rates which are discounted from the full annual compensation rates determined under R907-65-8, R907-65-9 and R907-65-10 including no compensation prior to commencement of construction. The department also may agree to the phasing of projects into clearly identified phases, with the compensation schedule structured based on the construction commencement and/or completion dates for each phase.

(2) If the department elects to discount compensation rates, it shall do so in a competitively neutral and nondiscriminatory manner for all similarly situated telecommunication facility providers.

R907-65-12. Lump Sum Monetary Compensation.

(1) The department is authorized to enter into agreements for longitudinal access to the right-of-way of the interstate system with telecommunications facility providers which offer, in lieu of annual compensation, one or more lump sum payments of monetary compensation. The agreement shall set forth the lump sum payment or payments due.

(2) Lump sum payments shall be calculated to be equivalent, on a present value basis, to annual compensation payments which would be required under R907-65-8, R907-65-9, R-907-65-10 and R907-65-11 over the same time period as that covered by each lump sum payment.

(3) For purposes of determining lump sum monetary compensation for longitudinal access to the right-of-way of the interstate system, the department shall use a discount rate equal to the yield (in percent per annum) on Moody's seasoned Aaa Corporate Bonds, as reported by the Federal Reserve Board through the Federal Reserve Statistical Release. The yield on Moody's Aaa Corporate Bonds reported for the first full month immediately prior to the date an agreement for lump sum monetary compensation is executed by the department shall be the discount rate applied for purposes of determining the amount of such lump sum monetary compensation.

(4) Each telecommunications facility provider which is to pay monetary compensation shall have the right to choose whether to pay it in one lump sum determined according to this Rule R907-65-12 or to pay it in annual installments. Unless the department otherwise agrees in writing, this choice shall be made before the agreement is signed, and the agreement shall set forth the choice made.

R907-65-13. In-Kind Compensation.

(1) The department is authorized to enter into agreements for longitudinal access to the right-of-way of the interstate system with telecommunications facility providers which offer, in lieu of or in addition to monetary compensation, in-kind compensation. In-kind compensation may include, without limitation, delivery to the department for its own uses and purposes of conduit, innerduct, dark fiber, access points, telecommunications equipment, telecommunications services, bandwidth and other telecommunications facilities. The agreement shall set forth the in-kind compensation.

(2) The department shall determine the present value of the in-kind compensation according to the methods set forth in R907-65-12. The department shall prepare an analysis setting forth its valuation at or before the time it executes the agreement. The valuation analysis need not be included in the agreement.

(3) The department shall value the in-kind compensation as

follows:

(a) Facilities for Department Use Only. Electronic equipment, conduit, fiber and other telecommunications hardware and software contributed to the department shall be valued on a present value basis at the estimated, reasonable cost to the telecommunications facility provider of procuring and installing the same.

(b) Joint Trenching. The present value of the estimated, reasonable cost to the telecommunications facility provider of joint trenching for placing conduit, fiber and other facilities of both the provider (and its customers) and the department shall be proportionately allocated to the department as a component of the present value of the in-kind compensation. The proportion allocated to the department shall equal the total estimated, reasonable cost of the trenching work multiplied by a fraction. The numerator of the fraction shall equal the amount of conduit and innerduct space to be contributed to the department under the agreement. The denominator of the fraction shall equal the total amount of conduit space the telecommunications facility provider is authorized to install under the agreement. Single duct conduit space shall be measured using the planned diameter of the conduit. Multi-duct conduit space shall be measured by summing the planned diameters of each innerduct in the conduit.

(c) Other Jointly Used Facilities. The present value of the estimated, reasonable cost to the telecommunications facility provider of providing any other telecommunications facility which is shared jointly by the provider and the department shall be proportionately allocated to the department as a component of the present value of the in-kind compensation. The department shall determine the proportion to be allocated to the department based on the percentage of use or benefit to which each party will be entitled under the agreement.

(d) Warranties; Maintenance and Operating Covenants. The department shall determine the present value of equipment warranties, warranties of conduit, fiber or other components, software warranties, maintenance covenants and operating covenants based on the reasonable, estimated cost of purchasing such warranties, maintenance and operating contracts from manufacturers or other third parties (if not already included in the cost to purchase the equipment, conduit, fiber, other components or software).

(e) Summation of In-Kind Values. The total present value of the in-kind compensation shall be the sum of the present values determined under subsections (a) through (d) above.

(4) The department shall require annual or lump sum monetary compensation (determined according to the methods set forth in R907-65-12), in addition to the in-kind compensation, if the present value of the in-kind compensation is less than the present value of the annual monetary compensation the department would require over the term of the agreement under R907-65-8, R907-65-9, R907-65-10 and R907-65-11. The amount of the annual or lump sum monetary compensation shall be the difference in such present values.

(5) The department may accept in-kind compensation with a present value in excess of the present value of annual monetary compensation payments which would be required under R907-65-8, R907-65-9, R907-65-10 and R907-65-11 if the telecommunications

facility provider consents in writing and gives a written waiver and release of all claims and protections arising under federal or Utah law by reason of such excess value. The waiver and release shall be in form approved by the director.

(6) Before entering into an in-kind compensation agreement, the department shall obtain from the telecommunications facility provider its valuations of the in-kind compensation. The telecommunications facility provider may provide the department information on its costs in order to assist the department in determining in-kind compensation value. The department shall reasonably consider such valuation and cost information in making its determination, but is not bound by the valuation or cost information submitted.

R907-65-14. Multiple Providers in Same Trench.

(1) If the department enters into an agreement with two or more telecommunications facility providers, or with a consortium or other entity whose members, partners, venturers or other participants are two or more telecommunications facility providers, or if the department requires two or more telecommunications facility providers to share a single trench, then the agreement(s) shall require that the telecommunications facility providers share the burden of the compensation owing to the department under the agreement(s) on a fair, reasonable and equitable basis, taking into consideration the proportionate uses and benefits to be derived by each telecommunications facility provider from the trench, conduits and other telecommunications facilities to be installed under the agreement(s).

(2) The foregoing does not limit the right of the department to require all the participating telecommunications facility providers to bear joint and several liability for the obligations owing to the department under the agreement(s).

(3) Any agreement which requires sharing of the burden of compensation owing to the department shall provide the department the right to review and audit the books, records and contracts of or among the participating telecommunications facility providers to determine compliance or lack of compliance with R907-65-14(1).

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EXHIBIT C

Highway officials also recognized that control of access could be materially affected by the extent and manner in which utilities were permitted to cross or otherwise occupy the right-of-way of Interstate highways. It was agreed that in order to be able to effectively carry out the intent of the highway legislation, a uniform national policy should be developed to establish the conditions under which publicly and privately owned utilities could be accommodated on Interstate right-of-way.

Thus, in 1957 AASHTO began the task of establishing such a national policy. In developing this policy, AASHTO arranged several meetings with national utility organizations and groups so that utility industry input could be taken into consideration. Finally, in 1959 AASHTO issued its document, *A Policy on the Accommodation of Utilities on the National System of Interstate and Defense Highways*, and the FHWA accepted the AASHTO policy as a design standard for Interstate highway projects.

The primary objectives of the AASHTO policy were –

– developing and maintaining access control;

– increasing highway safety and function to the maximum; and

– insuring uniformity of utility treatment among the States.

The AASHTO policy recognized the need for utility installations to cross over or under the Interstate right-of-way, as it was not intended for the Interstate to be a barrier to obstruct the development of expanding areas adjacent to the freeway.

Most important, the policy was viewed as strongly discouraging longitudinal utility use of Interstate right-of-way within the access control lines. However, the policy did not establish an outright prohibition of such use, as it was recognized that "extreme case exceptions" might be allowed when the conditions encountered were extraordinary and costly.

Over the years AASHTO reevaluated its position regarding utility use of Interstate right-of-way. The Policy was reissued in 1969 and in 1982 and was expanded to cover all freeway-type facilities. In each instance, the FHWA followed by adopting the AASHTO Policy for use on Federal-aid highways. In both 1969 and 1982 AASHTO reaffirmed the basic principles and policies it had been following in regard to utility use of freeway right-of-way.

The Surface Transportation Assistance Act of 1978, and the technical amendments that later followed, added § 109(l) to 23 U.S.C. This section specifically addressed the issue of utility use of highway right-of-way. It provided that utility use of the right-of-way on Federal-aid highways should not be permitted if such use would "adversely affect safety," and emphasized that highway and traffic safety were of paramount importance when considering the accommodation of utility facilities within highway right-of-way. However, this section also recognized that there could be adverse impacts resulting from not permitting such use, and it required that certain environmental and economic impacts be evaluated and considered in the denial of the use of Federal-aid highway right-of-way for utility facilities. The 1982 AASHTO Policy reflected these concerns and provided for their consideration in the decision-making process.

By the mid-1980s some State authorities and others were questioning the more restrictive provisions of the AASHTO and FHWA policies, particularly regarding longitudinal utility occupancy of freeway right-of-way. Some believed that certain types of utilities could be permitted to longitudinally use freeways with very little adverse impact on the freeway systems.

In consideration of these views and concerns, the FHWA agreed that a more flexible Federal policy position would be appropriate.

Effective February 8, 1988, the FHWA modified its regulations regarding utility installations within freeways (see § 645.209(c)). The revised regulations no longer mandated that the States adhere to the AASHTO Policy. Instead, each State was given the flexibility to adopt its own freeway utility accommodation plan, one that was best suited to its needs and conditions.

In turn, AASHTO revised its policy covering utilities within freeway right-of-way in February 1989. This revised AASHTO policy was generally consistent with the FHWA's regulations in many respects, but continued to prohibit longitudinal utility installations on freeway right-of-way, except in special cases under strictly controlled conditions. For this reason, the FHWA opted not to adopt the AASHTO policy as a Federal standard.

Freeway Accommodation Policies

Prior to the FHWA's regulatory change in February 1988, each State, as part of its overall utility accommodation policy, was required to address transverse utility crossings of freeways and how they were to be controlled. Once a State's policy was approved by the FHWA, the State could then approve individual utility requests for transverse freeway crossings without any further referral to the FHWA provided the crossings satisfied the criteria in their approved policy. For longitudinal utility use of freeways, the States were required to adopt a position at least as restrictive as that in the then current AASHTO Policy. Hence, prior to 1988, the only longitudinal installations allowed on freeways were extreme case exceptions under provisions in the AASHTO Policy, and each individual request had to be approved by the FHWA.

Subsequent to the FHWA's 1988 regulatory change, each State was required to update its utility accommodation policy and include its own policy for permitting utility use of freeways, including longitudinal use if such use was to be allowed.

The States had to decide if they wanted longitudinal utility installations on freeways and if so to what extent and under what conditions. Whatever a State decided to do in this regard had to be documented in its utility accommodation policy and submitted to the FHWA for approval. A State could permit certain utilities and exclude others. And, if a State so chose, it could prohibit any longitudinal utility installations.

All the States are now operating under freeway utility accommodation policies that have been approved by the FHWA. Many States opted to stick with the AASHTO Policy prohibiting longitudinal utility installations, except in special cases under strictly controlled conditions. The States that opted to allow longitudinal installations no longer have to submit individual proposals to the FHWA for approval. It has become their responsibility to assure that proposals are in accord with provisions in their approved utility accommodation policies.

Exceptions to these policies, or changes, must be submitted to the FHWA Division Administrator for approval. In substance, this places all utility freeway installations under the same administrative process that other utility use proposals have been under since the late 1960s.

In summary, FHWA policy for longitudinal utility installations on freeways is as follows:

– The States may decide if they want to allow longitudinal utility installations on freeways and if so to what extent and under what conditions.

- Whatever a State decides to do in this regard must be documented in its utility accommodation policy and approved by the FHWA. Exceptions or changes must be approved by the FHWA Division Administrator.

- A State may permit certain utilities and exclude others. If a State so chooses, it can prohibit any longitudinal utility installations.

- Fees charged for utility use are at a State's discretion and may be used as the State sees fit. The FHWA does, however, encourage States to use generated revenues for transportation purposes.

In approving a State's freeway utility accommodation policy, the FHWA must give careful consideration to measures proposed to insure safety of the traveling public, and features to protect the operation and integrity of the highway. Effects on both the present and future use of the freeway must be considered.

The FHWA recognizes that conditions vary. Highway safety matters are not the same on a low volume rural freeway as on a high volume urban one. Considerable latitude may be appropriate on these rural facilities. The nature and type of utility facilities may also differ from area to area. All these variables must be taken into account. It is noted that there is no such thing as an absolutely safe utility installation. The construction, operation and maintenance of any utility on or near a major high speed highway cannot be done without some risk. Judgment must be exercised by highway authorities in determining if the risks are acceptable and whether all reasonable measures have been taken to maximize the safety of the traveling public.

The FHWA regulation presented in § 645.209(c)(2)(v) includes a few details governing specific criteria a State's utility freeway accommodation policy should contain if it plans to allow longitudinal utility use within the access control lines. These are:

- A utility strip should be established along the outer edge of the right-of-way.

- Existing fences should be retained and, except along section of freeways having frontage roads, planned fences should be located at the freeway right-of-way line.

- The State or political subdivision should retain control of the utility strip, including its use by utility facilities.

- Service connections to adjacent properties to provide services to utility consumers should not be permitted from within the utility strip.

Median Installations

Federal regulations indicate that a utility strip should be established along the outer edge of the right-of-way. The FHWA has interpreted this to mean that longitudinal utility installations as a general rule should not be allowed within the median area of a freeway. There may, however, be some exceptional circumstances where utility facilities could be safely accommodated in the median. For example, for very wide medians where a utility could be installed well beyond the clear zone of the roadways and where access to the site is from crossroads, a case could well be made that there is minimal impact on the highway and its safe operation.

Another example might involve the installation of fiber optics needed for ITS purposes. In situations where it is not technically feasible or is unreasonably costly and there are no feasible alternate locations, it may be argued that the risk involved constructing, operating, and

maintaining a fiber optic installation will be more than offset by the benefits derived by ITS and other systems that the fiber optic facilities will serve.

Hence, proposals by States for a median installation under these circumstances, if considered justified, may be approved by Division Administrators as an exception to the State's approved utility accommodation policy under the provisions of § 645.215(d).

Access To Utility Facilities (Including Gates)

If a State allows utility facilities to longitudinally occupy freeway right-of-way within the access control lines, its utility accommodation policy must address access to construct, operate and maintain these facilities. The nature and extent of the access, including possible direct access from through roadways or ramps if allowed, and conditions for controlling and policing access should be covered in the State's policy. The State's policy on access should demonstrate that the State has taken adequate steps to ensure the permitted utility use, including access to construct, operate and maintain the utility facilities, can be accomplished in a manner that will not adversely affect the safety of the freeway.

The FHWA's approval of a State's utility accommodation policy is viewed as representing FHWA acceptance of the State's freeway access approval and control process (this could include locked gates, direct access from through roadways, etc.) as covered in the State's policy. No further submittal to FHWA on these matters would be necessary except in those instances where the proposed access is not in accord with the State's approved policy. In these cases, FHWA action on exceptions involving access can be handled under the provisions of 23 CFR 645.215(d) similar to other exceptions to a State's policy.

If a utility wants to make use of gates for access to its facilities, the following conditions are typically used in this situation:

- Access to and from the freeway will be on the basis of a revocable permit.
- The gates must be locked when not in use and can only be used by authorized utility personnel.
- Use must not adversely affect traffic operations;
- Use will not give the utility a claim to permanent access rights.

Uniform Policies and Procedures

Section 645.209(d) requires State transportation departments to control utility use of Federal-aid highway right-of-way within the State and its political subdivisions. This is to be done by exercising, or causing to be exercised, adequate regulation over such use and occupancy through the establishment and enforcement of reasonably uniform policies and procedures for utility accommodation.

The term "highway" is defined in § 645.207 to mean any public way for vehicular travel constructed or improved in whole or part with Federal-aid highway funds. Hence, there is a distinction between highways actually constructed or improved using Federal-aid highway funds, and highways eligible for construction or improvement with Federal-aid highway funds.

Even though States may only be required to regulate utility use on highways where Federal-aid highway funds have been used, as a practical matter it is difficult for them to adopt one policy

for Federally funded highways versus a different policy for adjoining State funded highways. As a result, States normally adopt a utility accommodation policy that covers highway routes under their jurisdiction as a group.

Utility Use Where State Lacks Authority

Under § 645.209(g), for Federal-aid projects on highways where the State cannot exercise authority to control utility use of the highway right-of-way, the State is required to make adequate arrangements to ensure that utility use of the highway right-of-way is properly controlled. Typically this situation arises on roads off the State's system, such as those under county or city jurisdiction; however, it can also occur for roads that may be under the jurisdiction of another State level entity such as a toll road authority. In these situations, the local or toll road authorities have the option of developing their own utility accommodation policies but this is rarely done. Rather, the approach used is that the State/local or State/toll road agreement for the Federal-aid highway project will make reference to the State's utility accommodation policy and its application to the local or toll road project.

This is one area of utility accommodation that requires continued attention. If a State's utility accommodation policy will, in effect, serve as the document controlling utility use of right-of-way on highways under the jurisdiction of others, particularly on local Federal-aid projects, it is important that the State's policy include provisions to adequately address utility use on these types of roadway facilities. It is also important that these other highway authorities are not only aware that the State's policy is being used, but are familiar with the requirements to be applied.

Scenic Areas

Section 645.209(h) maintains the same basic philosophy of not permitting the installation of utilities on highways within or adjacent to scenic areas except under special conditions. However, the method of administering this requirement was revised in 1985.

Under former PPM 30-4, if utility use was to be allowed in scenic areas under special conditions, the State was required to clear this matter through the Division Administrator. Sections 645.209(h) and 645.211(c)(3) change this process. Now the State is allowed to address the scenic areas issue, including special conditions under which exceptions will be allowed, within its utility accommodation policy. Thus, FHWA's acceptance of the State's utility accommodation policy should eliminate the need for clearance of individual exceptions through the Division Office.

Additionally, under former PPM 30-4.1, a mechanism was established for so-called hardship cases involving scenic areas. This process required a submittal to the Federal Highway Administrator, but none were ever made. As a consequence, when 23 CFR 645 was issued in 1985, this hardship procedure was not included. Should a need arise in the future to process a hardship type request involving scenic areas, it could be handled under 23 CFR 645.215(d) as a situation not in accordance with the State's approved policy. The FHWA's decisions on the matter can be made at the Division Office level.

Traffic Control Plan

This provision was included in 23 CFR 645 to highlight the importance of having proper traffic control within utility work areas. It is not a new requirement since 23 CFR 630 subpart J, Traffic Safety in Highway and Street Work Zones, has been in place many years and covers utility construction and maintenance work activities on Federal-aid projects.

Under § 645.209(j) it is intended that the transportation department maintain control over the process of providing proper traffic control devices in work zones. Designation of who is to prepare a traffic control plan and who is to provide the necessary traffic control devices is to be determined by the transportation department under the its own established procedures.

Corrective Measures/Utility Pole Safety Programs

Section 645.209(k), reads as follows:

> When the transportation department determines that existing utility facilities are likely to be associated with injury or accident to the highway user ... the highway agency shall initiate ... in consultation with the affected utilities, corrective measures ...

The intent of this regulation is for each State to work with pole owners to develop and implement programs to systematically remove, relocate, or mitigate hazardously-located utility poles in a reasonable, cost-effective manner.

A utility pole crash reduction program as envisioned in the Federal regulations should contain the following essential elements:

- Identification of hazardously-located utility poles.

- Analysis of hazardously-located poles and development of countermeasures,
- Establishment of a goal for removing, relocating, or mitigating hazardously-located utility poles.

- Actual removal, relocation, or mitigation of hazardously-located utility poles.

Ideally, the clear zone should be free of utility poles. Where poles exist in the clear zone, or where an analysis has shown that an existing pole located outside the clear zone may need treatment, many options are available. The following list has generally been considered as the desirable order of treatment:

- Remove the pole and underground the utility lines;

- Relocate the pole to a location where it is less likely to be struck;

- Reduce the number of poles by joint use, placing poles on only one side of the street, or increasing pole spacing by using bigger, taller poles;

- Reduce impact severity by using breakaway utility poles;

- Redirect a vehicle by shielding the pole with a longitudinal traffic barrier or crash cushion; and

- Warn of the presence of the pole if the alternatives above are not appropriate using warning signs, reflective paint, sheeting, or object markers placed on the poles.

There is also the possibility that keeping the driver on the road is the best solution to a crash problem. This may be done by positive guidance. For example, using pavement markings, delineators, advance warning signs, and other visual cues to tell the driver what to expect and to provide a visual path through a site. Physical enhancements such as improving the skid resistance of the pavement, widening the pavement travel lanes, widening or paving shoulders, placing rumble strips on the shoulders, improving the superelevation, straightening sharp

curves, decreasing the speed of vehicles, or adding lighting in areas where crashes frequently occur at night, may also diminish crash potential by decreasing the number of vehicles that for whatever reason leave the travelway.

Once specific corrective actions have been determined, it is expected implementation will be pursued through a prioritization process which takes into account resources available, replacement and upgrading planned both for the utility and highway physical plants, and overall accident potential.

To be effective this corrective program must be a joint effort between highway authorities and the affected utilities. It is strongly encouraged that the utility companies work closely with the transportation departments in identifying problem areas and establishing schedules for corrective actions. Such schedules should take into consideration, wherever possible, a utility's planned activities on line upgradings, replacements, and the like. An orderly, planned, effective process of safety improvements over time that would take into consideration the costs to both the highway user and utility consumer is preferred.

The Washington State Department of Transportation (WSDOT) has a model utility pole safety program. It was developed and implemented in coordination with the affected utility pole owners. The Division Office provided invaluable encouragement and assistance. WSDOT considers the most hazardously-located utility poles to be those that are: (a) outside of horizontal curves where advisory signed speeds for the curve are 15 mph or more below the posted speed limit of that section of highway; (b) within the turn radius of public at-grade intersections; (c) where a barrier, embankment, rock outcropping, ditch, or other roadside feature is likely to direct a vehicle into a utility object; or (d) closer than 5-feet horizontal beyond the edge of the usable shoulder. A goal has been established for removing, relocating, or mitigating a certain number of hazardously-located utility poles each year. This goal applies to each company owning utility poles and takes into account the size of the utility company, the number of poles in need of attention, available funding, and other factors. Hazardously-located utility poles may be removed, relocated, or mitigated in conjunction with planned highway or utility projects or individually. All utility poles removed, relocated, or mitigated, for whatever reason, count toward the utility company's goal. Efforts are made to systematically address the worst poles first.

Since most hazardously-located utility poles are on highway right-of-way, State law in most States requires the owner of the poles to pay for removal, relocation, or mitigation. If, however, the State can pay and does pay, Federal funds can participate in the cost, even up to 100 percent in some cases.

A strong case can be made for moving utility poles if they are located so as to present a significantly greater threat to motorists than anything else along the road. But, if they are not, States should not ask the utility pole owners to do any more to improve roadside safety than they plan to do themselves.

Questions can arise as to the amount of corrective actions regarding utility facilities that should be undertaken as part of 3R (resurfacing, restoration, rehabilitation) projects. Overall, the FHWA has encouraged and supported efforts by each State to develop and implement reasonable and effective clear zone policies consistent with the principles set forth in the AASHTO Green Book (see above discussion of "New Above Ground Installations/ Clear Zone Policies").

In this respect a number of States have adopted individual 3R project design criteria that specifically addresses the clear zone issue. Considerable judgment must be exercised in

actually establishing clear roadside areas on individual 3R projects to ensure that the safety benefits are reasonably commensurate with costs. Consideration should be given to this matter regardless of who pays for the utility work.

As clarified by FHWA's July 1988 final rule, which modified 23 CFR 645.107, costs incurred by transportation departments in implementing projects for safety corrective measures to reduce the hazards of utilities to highway users are eligible for Federal-aid participation.

Wetlands

There has been concern that FHWA's utility regulations might be used by some as a basis for authority for allowing placement within highway right-of-way of structures or facilities to drain adjacent wetlands. Section 645.209(l) was specifically added to address this issue. The section clearly states that the installation of private lines on the right-of-way of Federal-aid or direct Federal highway projects to drain adjacent wetlands is inconsistent with Executive Order 11990, Protection of Wetlands, and is to be prohibited.

Utility Determination

The 2000 amendments added paragraph (m) to 23 CFR 645.209 to emphasize that in determining whether a proposed installation is a utility or not, the most important consideration is how the State views it under its own State laws and/or regulations.

This determination is important because utilities are accommodated under the utility regulations; whereas, private lines and other non-utilities are accommodated under other regulations. As in many utility-related matters, the FHWA definition of "utility facilities" is broad enough to cover most situations, but nonetheless, in States where the State definition is more restrictive, or sometimes more liberal, than the FHWA definition, the FHWA will normally look upon it in the same manner the State does.

STATE UTILITY ACCOMMODATION POLICIES
(23 CFR 645.211)

Overall Process

FHWA's historic approach to handling utility use of the right-of-way of Federal-aid and direct Federal projects has been maintained in 23 CFR 645 subpart B. This regulation requires each State to develop its own utility accommodation policy setting forth the manner in which the State will control the use of Federal-aid highway right-of-way by utility facilities. In 1988 this concept was expanded to also include longitudinal utility use of freeway right-of-way.

Once the State's policy is approved by the FHWA, any utility installations proposed to be installed on Federal-aid highway projects in accordance with the approved State policy may be approved by the State without referral to the FHWA. FHWA approval of proposed utility installations is limited to those which are not in accordance with the approved State policy.

Criteria

The FHWA uses two AASHTO publications -- *A Guide for Accommodating Utilities Within Highway Right-of-Way* and *Roadside Design Guide* -- to assist in its review of individual State utility accommodation policies. This means these documents will serve as guidance for

VERMONT

FCC Request for Public Comment
Streamlining Deployment of Small Cell Infrastructure
by Improving Wireless Facilities Siting Policies

The wireless industry is seeking declaratory ruling by the Federal Communication Commission (FCC), Wireless Telecommunications Bureau (WTB) regarding Sections 253 and 332(c)(7) of the Communication Act and Section 6409(a) of the Spectrum Act. These sections were ratified to remove barriers to deployment of wireless network facilities. The wireless industries concerns are as follows:

1. State and local governments excessive period for review of siting applications.
2. State and local governments imposing high processing fees and excessive recurring charges for use of public rights of ways.
3. State and local governments fees and reoccurring charges are not competitively neutral and non-discriminatory.
4. State and local governments do not publicly disclose fees and reoccurring charges as well as how they are calculated.

Vermont Agency of Transportation Comments

Review of Siting Applications

The Vermont Agency of Transportation always seeks to review and approve/deny complete siting applications within 30 days with some sense of reasonableness. There are situations that are not within our control that may hinder an application from not being completed within specified time. These include but are not limited to complexity of the application, staffing levels, workload, errors, etc. Section 332 requirement for authorities to act on requests "within a reasonable period of time" is appropriate.

Processing Fees and Recurring Charges

States should have the flexibility to charge a fair value for the use of publicly owned land when used by profiting companies. Vermont's fees are approved by Legislature and implemented to offset administrative costs. Recurring charges for use of the highway right of way are allowed under federal regulation as well as state statute. Under 19 V.S.A. §26a(b), the State is required to "assess, collect, and deposit in the transportation fund a reasonable charge or payment with respect to leases or licenses for access to or use of state-owned rights-of-way by providers of broadband or wireless communications facilities or services. Further, federal regulations require Vermont to obtain fair market value for surplus property, unless the State makes a public interest finding which discounts or eliminates those charges.

Fees and Charges being Competitively Neutral and Non-discriminatory

Vermont's fees and charges are competitively neutral and are determined by the use and market value. Any charges that are not predetermined would be evaluated on an individual basis to determine the market value.

Publicly Disclosed Fees and Charges

Vermont's fees for 1111 permits (access/use permit) or charges for use of the right of way are public.